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Cuba. Laws, statutes, etc.

Translation of the Civil Code

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1899

TRANSLATION

OF

THE CIVIL CODE

IN FORCE IN

CUBA, PORTO RICO, AND THE PHILIPPINES.

laws, statutes, etc.

DIVISION OF CUSTOMS AND INSULAR AFFAIRS.
WAR DEPARTMENT.
October, 1899.

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ROYAL DECREE.

At the suggestion of the colonial secretary, in accordance with the council of secretaries, etc.,

I hereby decree the following:

ARTICLE 1. The Civil Code now in force in the Peninsula, drafted in accordance with the provisions of the law of May 11, 1888, and approved by royal decree of the 24th instant, is hereby extended to the islands of Cuba, Porto Rico, and the Philippines.

ART. 2. This Code shall go into effect in the said islands twenty days after its publication in the official newspapers of the same.

ART. 3. In accordance with the provisions of article 1 of the said Code, the laws shall go into effect in the colonial provinces twenty days after their promulgation, it being understood that this shall be the day on which their publication in the official newspapers of the islands shall end.

Given at San Ildefonso, July 31, 1889.

MARÍA CRISTINA.

MANUEL BECERRA,
Colonial Secretary.

CIVIL CODE.

PRELIMINARY TITLE.

LAWS, THEIR EFFECT, AND GENERAL RULES FOR THEIR APPLICATION.

ARTICLE 1. Laws shall be binding in the Peninsula, in the adjacent islands, in the Canaries, and in the territory of Africa, which is subject to Peninsular legislation, twenty days after their promulgation, if not otherwise provided therein.

The promulgation shall be understood as having taken place the day of the termination of the publication of the law in the *Gaceta*.

ART. 2. Ignorance of the law does not excuse from compliance therewith.

ART. 3. Laws shall not have a retroactive effect unless otherwise prescribed therein.

ART. 4. Acts executed against the provisions of law are void, excepting the cases in which said law orders their validity.

Rights granted by the laws may be renounced, provided this renunciation is not contrary to public interest or public order, or to the prejudice of a third person.

ART. 5. Laws are repealed only by other subsequent laws, and disuse or any custom or practice to the contrary shall not prevail against their observance.

ART. 6. Any tribunal which refuses to render judgment on the pretext of silence, obscurity, or insufficiency of the laws shall incur liability therefor.

When there is no law exactly applicable to the point in controversy, the customs of the place shall be observed, and, in the absence thereof, the general principles of law.

ART. 7. If in the laws months, days, or nights are referred to, it shall be understood that the months are of thirty days, the days of twenty-four hours, and the nights from the setting to the rising of the sun.

If the months are indicated by their names, they shall be computed by their actual number of days.

ART. 8. Penal laws, police laws, and those of public security are binding on all those who reside in Spanish territory.

ART. 9. The laws relating to family rights and obligations, or to the status, condition, and legal capacity of persons, obligate Spaniards even though they reside in a foreign country.

ART. 10. Personal property is subject to the laws of the nation of the

owner thereof; real property to the laws of the country in which it is situated.

However, legal and testamentary successions, with regard to the order of succession, as well as to the amount of the successional rights and to the intrinsic validity of their provisions, shall be regulated by the laws of the nation of the person whose succession is in question, whatever may be the nature of the property and the country where it may be situate.

Biscayans, even though they reside in towns, shall continue subject, with regard to the property they possess in the level lands, to law 15, title 20, of the *Fuero de Vizcaya*.

ART. 11. The forms and solemnities of contracts, wills, and other public instruments are governed by the laws of the country in which they are executed.

When said instruments are authenticated by diplomatic or consular officials of Spain abroad, the formalities required by Spanish laws for their execution shall be observed.

Notwithstanding the provisions of this and of the preceding article, prohibitive laws concerning persons, their acts or property, and those which relate to the public order and to good morals, shall not remain without effect by virtue of laws issued or judgments rendered, or by regulations made or conventions agreed upon in a foreign country.

ART. 12. The provisions of this title, in so far as they determine the effects of the laws, statutes, and general rules for their application, are binding in all the provinces of the Kingdom, as well as the provisions contained in title 4, book 1.

In all other matters the provinces and territories in which the law of the forum is in force shall preserve it for the present, no change being made in their actual judicial administration, whether written or customary, by the publication of this code, which shall be enforced only as a supplementary law in the absence of that which is such by their special laws.

ART. 13. Notwithstanding the provisions of the foregoing article, this code shall go into effect in Aragón and in the Balearic Islands at the same time as in the provinces not under the law of the forum, in so far as not conflicting with those provisions of the forum or customary ones which are actually in force.

ART. 14. In accordance with the provisions of article 12, those of articles 9, 10, and 11, with regard to persons, acts, and property of Spaniards abroad and that of foreigners in Spain, are applicable to persons, acts, and property of Spaniards in territories or provinces having different civil legislation.

ART. 15. Family rights and duties, those relating to the status, condition, and legal capacity of persons, and those of testamentary or intestate succession declared in this code, are applicable:

1. To persons born in the common-law provinces or territories of parents subject to the law of the forum, if the latter, during the minority

of the children, or the said children, within the year following their majority or emancipation, declare it is their desire to submit themselves to the civil code.

2. To the children of a father, and, should the latter not exist or be unknown, of a mother belonging to provinces or territories subject to the common law, even when born in provinces or territories where the law of the forum is in force.

3. To those who, proceeding from provinces or territories subject to the law of the forum, should have acquired a residence in other ones, subject to the common law.

For the purposes of this article, residence is acquired by a residence of ten years in provinces or territories subject to the common law, unless the interested party, before the termination of this period, expresses his wishes to the contrary, or by a residence of two years, provided that the interested party states that this is his wish. Either declaration should be made before the municipal judge for the proper record in the civil registry.

In any case, the wife shall follow the condition of the husband; and the children, not emancipated, that of their father, and in his absence that of their mother.

The provisions of this article are of reciprocal application to the Spanish provinces and territories having different civil legislation.

ART. 16. In matters which are governed by special laws, the deficiency of the latter shall be supplied by the provisions of this Code.

BOOK FIRST.

PERSONS.

TITLE I.

Spaniards and Foreigners.

ART. 17. The following are Spaniards:

1. Persons born in Spanish territory.

2. Children of a Spanish father or mother, even though they were born out of Spain.

3. Foreigners who may have obtained naturalization papers.

4. Those who, without said papers, may have acquired a residence in any town in the Monarchy.

ART. 18. Children, while they remain under the parental authority, have the nationality of their parents.

In order that those born of foreign parents in Spanish territory may enjoy the benefits granted them by No. 1 of article 17, it shall be an indispensable requisite that the parents declare, in the manner and before the officials specified in article 19, that they choose in the name of their children the Spanish nationality, renouncing all others.

ART. 19. The children of a foreigner born in Spanish possessions must state, within the year following their majority or emancipation, whether they desire to enjoy the citizenship of Spaniards, granted them by article 17.

Those who are in the Kingdom shall make this declaration before the official in charge of the civil registry of the town in which they reside; those who reside abroad before one of the consular or diplomatic agents of the Spanish Government, and those who are in a country in which the Government has no agent addressing the secretary of state of Spain.

ART. 20. The citizenship of a Spaniard is lost by acquiring the nationality of a foreign country, or by accepting employment from another Government, or by entering the armed service of a foreign power without the permission of the King.

ART. 21. A Spaniard who loses his citizenship by acquiring the nationality of a foreign country can recover it upon returning to the Kingdom by declaring to the official in charge of the civil registry of the domicile which he elects that such is his wish, in order that the proper entry may be made, and by renouncing the protection of the flag of said country.

ART. 22. A married woman follows the condition and nationality of her husband.

A Spanish woman who marries a foreigner may, upon the dissolution of the marriage, recover the Spanish nationality by complying with the requisites mentioned in the preceding article.

ART. 23. Any Spaniard who loses his citizenship by accepting employment from any other government, or by entering the armed service of a foreign power without the King's permission, can not recover the Spanish nationality without previously obtaining the royal authorization.

ART. 24. A person born abroad, of a Spanish father or mother, who may have lost the Spanish nationality on account of the parents having lost it, may also recover it by complying with the conditions required by article 19.

ART. 25. In order that foreigners who have obtained naturalization papers or acquired a residence in any town in the Monarchy may enjoy Spanish nationalty, they must previously renounce their former nationality, swear to the constitution of the Monarchy, and record themselves as Spaniards in the civil registry.

ART. 26. Spaniards who change their domicile to a foreign country, where they may be considered as natives without other conditions than that of residence therein, shall be required, in order to preserve the Spanish nationality, to state that such is their wish before the Spanish diplomatic or consular agent, who must record them in the registry of Spanish residents, as well as their spouses, should they be married, and any children they may have.

ART. 27. Foreigners enjoy in Spain the rights which the civil laws grant to Spaniards, with the exception of the provisions of article 2 of the constitution of the State or in international treaties.

ART. 28. Corporations, institutions, and associations recognized by law and domiciled in Spain shall enjoy the Spanish nationality pro-

vided they possess the character of judicial persons in accordance with the provisions of this code.

Associations domiciled abroad shall have in Spain the consideration and the rights fixed in treaties or special laws.

TITLE II.

Birth and extinction of civil personality.

CHAPTER FIRST.

Natural persons.

ART. 29. Birth determines personality, but the conceived child is considered as born for all favorable purposes, provided that it be born with the conditions mentioned in the following article.

ART. 30. For civil purposes the fœtus shall only be considered as born which has a human form and lives twenty-four hours entirely separated from the mother's womb.

ART. 31. Priority of birth, in case of twins, gives to the firstborn the rights which the law recognizes in primogeniture.

ART. 32. Civil personality is extinguished by the death of persons.

Minority, insanity, or idiocy, the state of being deaf and dumb, prodigality, and civil interdiction are only restrictions upon the judicial personality. Those who are in any of these conditions may have rights and even obligations when they arise from the facts or from the relations between the property of the incapacitated person and a third person.

ART. 33. Should there be doubt between two or more persons called to succeed each other as to which of them died first, he who alleges the prior death of one or the other must prove it; in the absence of proof it shall be presumed that they both died at the same time, and the transmission of rights from one to the other shall not take place.

ART. 34. With regard to the presumption of the death of an absentee and its effects the provisions of title 8 of this book shall govern.

CHAPTER II.

Judicial persons.

ART. 35. The following are judicial persons:

1. The corporations, associations, and institutions of public interest recognized by law.

Their personality begins from the very instant in which, in accordance with law, they are validly established.

2. The associations of private interest, be they civil, commercial, or industrial, to which the law grants proper personality, independent of that of each member thereof.

ART. 36. The associations referred to in No. 2 of the foregoing article, shall be governed by the provisions of their articles of association, according to the nature of the latter.

ART. 37. The civil capacity of corporations shall be governed by the laws which have created or recognized them; that of associations by their by-laws, and that of institutions by the rules of their establishment, duly approved by an administrative act, when this requisite is necessary.

ART. 38. Judicial persons may acquire and possess property of all kinds, as well as contract obligations and institute civil or criminal actions in accordance with the laws and rules of their establishment.

The church shall be governed, in this particular, by what has been agreed upon by both powers, and educational and charitable institutions by the provisions of special laws.

ART. 39. When corporations, associations, and institutions have ceased to act, by reason of the termination of the period during which they legally acted, or on account of having attained the ends for which they were established, or because it has become impossible to apply thereto the activity and the means which were at their disposal, the property shall be disposed of as may have been determined upon by the laws or by-laws or articles of their establishment. If nothing has been previously fixed, the property shall be used for similar purposes in the interests of the region, province, or municipality which may have principally reaped the benefits of the extinct institutions.

TITLE III.

Domicile.

ART. 40. For the exercise of rights and the fulfillment of civil obligations the domicile of natural persons is the place of their usual residence; and, in a proper case, that determined by the law of civil procedure.

The domicile of resident diplomats who, by reason of their office abroad, enjoy the rights of extraterritoriality shall be the last one they had in Spanish territory.

ART. 41. When neither the law which has created or recognized them, nor the statutes or rules of their establishment fix the domicile of judicial persons, it shall be understood that it is at the place where their legal representation is established or where they exercise the principal duties of their institution.

TITLE IV.

Marriage.

CHAPTER FIRST.

General provisions.

SECTION FIRST.—*Forms of marriage.*

ART. 42. The law recognizes two forms of marriage—the canonical, which all who profess the Catholic religion must celebrate, and the civil, which shall be celebrated in the manner prescribed in this code.

SECTION SECOND.—*Provisions common to both forms of marriage.*

ART. 43. Future espousals do not give rise to an obligation to contract marriage. No tribunal shall admit a complaint in which their fulfillment is demanded.

ART. 44. If the promise has been made in a public or private instrument by a person of age, or by a minor in the presence of the person whose consent is necessary for the celebration of the marriage, or when the banns have been published, the person who refuses to marry, without just cause, shall be obliged to indemnify the other party for the expenses which he or she may have incurred by reason of the promised marriage.

An action to recover indemnity for the expenses to which the foregoing article refers may be instituted only within a year, counted from the day of the refusal to celebrate the marriage.

ART. 45. Marriage is forbidden—

1. To a minor who has not obtained permission and to a person of age who has not requested the advice of the persons whose right it is to authorize one or the other in the cases provided for by law.

2. To a widow during the three hundred and one days following the death of her husband, or before childbirth if she should have been left pregnant, and to the woman whose marriage has been declared void in the same condition and for the same periods, to be counted from the date of her legal separation.

3. To the guardian and his descendants with the persons whom he may have or may have had under charge, until the guardianship has terminated and the accounts of his administration have been approved, except in case the father of the person subject to guardianship has authorized the marriage in a will or in a public instrument.

ART. 45. (Cuba and Porto Rico.) The following are forbidden to marry in the islands:

Males under 20 years of age and females under 17, natives of the Spanish Antilles, who have not obtained the proper permission, and those over said ages who have not requested the advice of the persons whose legal right it is to authorize one or the other.

(There is no change in Nos. 2 and 3.)

ART. 46. The permission referred to in No. 1 of the preceding article must be granted the legitimate children by the father; in his absence or where he is prevented from giving it the power to grant it devolves upon the mother, the paternal and maternal grandparents, and, in the absence of all of them, upon the family council, in the order fixed here.

If acknowledged natural children or children legitimized by royal concession are in question, such consent must be asked of those who acknowledged or legitimized them, of their ascendants, and of the family council, in the order established in the preceding paragraph.

If adopted children are in question, the consent shall be asked of the adopting father, and in his absence of the proper members of the natural family.

Other illegitimate children shall obtain the consent of their mother, when she is legally acknowledged, that of the maternal grandparents in the same case, and, in the absence of either, that of the family council.

It is the duty of the heads of foundling institutions to give consent for marriage to those educated therein.

ART. 47. Children of age are obliged to ask the advice of their father, and in his absence that of the mother. If they should not obtain it, or it should be unfavorable, the marriage can not be celebrated until three months after the petition is made.

ART. 47. (Cuba and Porto Rico.) Children over the ages referred to in number 1 of article 45 are obliged to request the advice of the father, and in his absence of the mother. Should they not obtain it, or should it be unfavorable, the marriage can not take place until three months after the petition was made.

ART. 48. The consent and the favorable advice for the celebration of a marriage must be proven, if requested, by means of an instrument authenticated by a civil or ecclesiastical notary or by the municipal judge of the domicile of the petitioner.

When the advice has been asked in vain the lapse of time to which the preceding article refers shall be proven in the same manner.

ART. 49. None of those called upon to give their consent or advice is obliged to state the reasons for granting or refusing it, nor is there any remedy against their dissent.

ART. 50. If, notwithstanding the provisions of article 45, the persons mentioned therein are married, their marriage shall be valid; but the contracting parties, without prejudice to the provisions of the penal code, shall be subject to the following rules:

1. The marriage shall be understood as contracted with the absolute separation of property, and each spouse shall retain the ownership and administration of that which belongs to him or her, the income therefrom being his or hers, although with the obligation of proportionally defraying the marriage expenses.

2. Neither of the spouses shall receive from the other anything by gift or by will.

The provisions of the two preceding rules shall not be applicable to the cases of number 2 of article 45, if dispensation has been obtained.

3. If one of the spouses is a minor, not emancipated, he or she shall not administer his or her property until attaining majority. In the meantime he or she shall only be entitled to support, which shall not exceed the net income from his or her property.

4. In the cases of number 3 of article 45 the guardian shall, besides, lose the administration of the property of the ward during her minority.

ART. 51. Civil or canonical marriage shall produce no civil effects when either of the spouses is already legally married.

ART. 52. Marriage is dissolved by the death of one of the spouses.

SECTION THIRD.—*Proof of marriage.*

ART. 53. Marriages celebrated before this code went into effect shall be proved by the means established by prior laws.

Those contracted subsequently shall be proved only by a certificate of the record in the civil registry, unless the books thereof never existed or have disappeared, or a question is pending before the tribunals, in which cases all kinds of evidence is admissible.

ART. 54. In the cases referred to in the second paragraph of the foregoing article, the uninterrupted status of the parents, together with the certificates of the birth of their children as legitimate, shall be one method of proof of the marriage of the former, unless it is shown that one of the two was bound by another prior marriage.

ART. 55. A marriage contracted in a foreign country, where such acts do not require a regular or authentic registration, may be proven by any of the methods of proof admitted by law.

SECTION FOURTH.—*Rights and obligations of husband and wife.*

ART. 56. The spouses are obliged to live together, to be faithful to and mutually assist each other.

ART. 57. The husband must protect the wife and the latter obey the husband.

ART. 58. The wife is obliged to follow her husband wherever he may establish his residence. The tribunals, nevertheless, may, with just cause, exempt her from this obligation when the husband removes his residence beyond the seas or to a foreign country.

ART. 59. The husband is the administrator of the property of the conjugal partnership, except when the contrary is stipulated and in the case of article 1384.

If he is under 18 years of age, he can not administer without the consent of his father; in the absence of the latter, that of the mother, and in the absence of both without that of his guardian. Neither may he appear in a suit without the appearance of said persons.

In no case, until he has attained majority, may the husband, without the consent of the persons mentioned in the preceding paragraph, borrow money, encumber or alienate the real property.

ART. 60. The husband is the representative of his wife. The latter can not, without his permission, appear in a suit in person nor through a solicitor.

Nevertheless, she does not require such permission to defend herself in a criminal suit, or to proceed against or to defend herself in suits with her husband, or when she may have obtained the rights in accordance with the provisions of the law of civil procedure.

ART. 61. Neither may the wife, without the permission or power of her husband acquire property for a good or valuable consideration, alienate her property or bind herself, except in the cases and with the limitations established by law.

ART. 62. Acts executed by the wife contrary to the provisions of the preceding articles are void, except when they involve things which by their nature are to be applied to the ordinary use of the family, in which case purchases made by the wife shall be valid. Purchases of jewels, furniture, and precious objects made without the permission of the husband shall only be valid when the latter may have consented to his wife using and enjoying such things.

ART. 63. The wife, without permission of her husband, may—

1. Execute a will.

2. Exercise the rights and fulfill the duties which appertain to her with regard to the legitimate and acknowledged natural children she may have had by another, and with relation to the property of the same.

ART. 64. The wife shall share the honors of her husband, except those which are strictly and exclusively personal, and shall retain them as long as she does not contract a new marriage.

ART. 65. Only the husband and his heirs may enforce the nullity of the acts executed by his wife without proper permission or authorization.

ART. 66. The provisions of this section are understood to be without prejudice to those of this code relating to absence, incapacity, prodigality, and interdiction of the husband.

SECTION FIFTH.—*Effects of annullment of marriage and of divorce.*

ART. 67. The civil effects of suits and decrees concerning annullment of marriage and divorce can only be obtained before the ordinary tribunals.

ART. 68. After the suits referred to in the preceding article have been instituted and admitted, the following measures shall be adopted during the pendency thereof:

1. The separation of the spouses in every case.

2. The protection of the wife in the cases and in the manner prescribed by the law of civil procedure.

3. The placing of the children under the care of one or both of the spouses as may be proper.

4. The provision for the support of the wife and of the children who do not remain under the authority of the father.

5. The adoption of the necessary measures to prevent the husband, who may have given cause for the divorce, or against whom the suit for annulment of the marriage has been instituted, from injuring the wife in the administration of her property.

ART. 69. A marriage contracted in good faith produces civil effects, although it may be declared void.

If good faith existed on the part of only one of the spouses it shall produce civil effects only with regard to said spouse and to the children.

Good faith is presumed if the contrary does not appear.

When bad faith existed on the part of both spouses, the marriage shall only produce civil effects with relation to the children.

ART. 70. After the annulment of a marriage has been finally decreed, the sons over three years of age shall remain under the care of the father, and the daughters under the care of the mother, if there should have been good faith on the part of both spouses.

If good faith existed on the part of one of the spouses only, the children of both sexes shall remain under the authority and care of said spouse.

If both were guilty of bad faith, the tribunal shall decide as to the disposition of the children in the manner prescribed in the second paragraph of No. 2 of article 73.

The sons and daughters, under three years of age, shall in all cases remain under the charge of the mother, until they attain this age, unless on account of special reasons the decree has ordered otherwise.

ART. 71. The provisions of the first and second paragraphs of the preceding article shall not be made use of if the parents, by common consent, shall provide otherwise for the care of the children.

ART. 72. The final decree of annulment shall produce, with regard to the property of the marriage, the same effects as a dissolution by death; but the spouse who has acted in bad faith shall have no rights to the profits of the conjugal partnership.

When both have acted in bad faith, one shall be set off by the other.

ART. 73. A decree of divorce shall produce the following effects:

1. The separation of the spouses.

2. The children to remain or be placed under the authority and protection of the innocent spouse.

When both are guilty, a guardian shall be provided for the children in accordance with the provisions of this code, and if the decree has not provided otherwise, the mother in every case shall have the children under three years of age in her charge.

Upon the death of the innocent spouse, the guilty one shall recover the parental authority and his or her rights, when the cause which gave rise to the divorce should have been adultery, violence to the person, or grave insult. When the cause is different, a guardian shall be appointed for the children. The deprivation of the parental authority and of its rights does not exempt the guilty spouse from the fulfillment of the obligations which this code imposes upon him or her with regard to the children.

3. The guilty spouse shall lose all that may have been given or promised him or her by the innocent one or by any other person in consideration for the latter; and the innocent spouse shall keep all that he or she has received from the guilty one, being permitted, besides, to claim forthwith all that may have been promised by the same.

4. The separation of the property of the conjugal partnership, and the loss of the administration of that of the wife, if the husband should have it, and is the one who gave cause for the divorce.

5. The retention by the innocent husband of the administration, if he should have it, of the property of the wife, who shall only be entitled to support.

ART. 74. Reconciliation terminates the suit for divorce and leaves the decree issued in regard thereto without subsequent effects; but the spouses must give notice thereof to the tribunal which has or may have taken cognizance of the suit.

The effects of the decree shall be enforced with regard to the children, without prejudice to the provisions of the foregoing article, when it is founded on the attempt or connivance of the husband or of the wife to corrupt their sons or to prostitute their daughters, in which case, if either still continue under the parental authority, the tribunals shall adopt the proper measures in order to protect them from corruption or prostitution.

CHAPTER SECOND.—*Canonical marriage.*

ART. 75. The requisites, form, and solemnities for the celebration of canonical marriages shall be governed by the provisions of the Catholic Church and of the Holy Council of Trent, accepted as laws of the Kingdom.

ART. 76. Canonical marriage shall produce all the civil effects with regard to the persons and property of the spouses and their descendants.

ART. 77. A municipal judge or other official of the State shall be present at the celebration of the canonical marriage for the sole purpose of making the immediate record thereof in the civil registry. For this purpose the contracting parties are obliged to give notice in writing to the proper municipal court twenty-four hours at least in advance, of the day, hour, and place where the marriage is to be celebrated, incurring, should they not do so, a fine of from 5 to 80 pesetas. The municipal judge shall give a receipt for the notice from the contracting parties. Should he refuse to give it, he shall incur a fine, which shall not be less than 20 nor exceed 100 pesetas.

The celebration of the canonical marriage shall not be proceeded with without the presentation of said receipt to the parochial priest.

If the marriage is celebrated without the presence of the municipal judge or his delegate, notwithstanding that the contracting parties may have advised him thereof, the record of the certificate of the canonical marriage in the civil registry shall be made at his expense, and he shall pay, besides, a fine which shall not be less than 20 nor exceed 100 pesetas. In such case, the marriage shall produce all its civil effects from the moment of its celebration.

If the contracting parties should be at fault for not having given notice to the municipal judge, they may remedy the defect by asking for the record of the marriage in the civil registry. In this case, the marriage shall produce no civil effects, except from the time of its record.

ART. 78. Those who contract canonical marriage *in articulo mortis* may give notice to the person in charge of the civil registry, at any time before its celebration, and prove, in any manner whatsoever, that they have fulfilled this duty.

The penalties imposed upon contracting parties who omit this requisite shall not be applicable to the case of marriage *in articulo mortis*, when it is shown that it was impossible to give proper notice. In every case, in order that the marriage may produce civil effects from the date of its celebration, the sacramental certificate shall be entered in the registry within the following ten days.

ART. 79. The secret marriage of conscience, celebrated before the church, is not subject to any formality in the civil order, nor shall it produce any civil effects, except from the time of its publication through its entry in the registry.

This marriage shall nevertheless produce civil effects from the time of its celebration if both contracting parties, by common consent, ask the bishop who authorized it, for a copy of the entry made in the secret register of the bishopric, and if they send it directly, with the proper secrecy, to the general direction of the civil registry, requesting its entry. For this purpose the general direction shall keep a special and secret registry with the necessary precautions, in order that the contents of said records may not be made known until the interested parties request that they be made public by transferring the same to the municipal registry of their domicile.

ART. 80. The cognizance of suits for annulment and divorce, in case of canonical marriages, appertains to the ecclesiastical tribunals.

ART. 81. When a suit for divorce or annulment of marriage has been instituted before the ecclesiastical tribunal, it is the duty of the civil tribunal to order, at the instance of the party interested, the provisions referred to in article 68.

ART. 82. A final decree of annulment or divorce of a canonical marriage shall be entered in the civil registry, and shall be presented to the ordinary tribunal for the purpose of requesting its enforcement in the part relating to the civil effects.

CHAPTER THIRD.

Civil marriage.

SECTION FIRST.—*Capacity of the contracting parties.*

ART. 83. The following can not contract marriage:

1. Males under the age of fourteen and females under the age of twelve.

Marriage contracted by persons who have not arrived at the age of puberty, shall, nevertheless, be, *ipso facto* validated, without the necessity of an express declaration, if one day after having attained legal

puberty they should have lived together without having given rise to a suit against its validity, or if the woman should have conceived before legal puberty or before the institution of said suit.

2. Those who were not in the full enjoyment of their reason at the time of contracting marriage.

3. Those who suffered from absolute or relative physical impotency for the purposes of procreation, prior to the celebration of the marriage, in a patent, perpetual, and incurable manner.

4. Those ordained *in sacris* and those professed in an approved religious canonical order, bound by a solemn pledge of chastity, unless either have obtained the proper canonical dispensation.

5. Those who are already bound in marriage.

ART. 84. Neither can the following contract marriage with each other:

1. The ascendants and descendants by legitimate or natural consanguinity or affinity.

2. Collaterals by legitimate consanguinity up to the fourth degree.

3. Collaterals by legitimate affinity up to the fourth degree.

4. Collaterals by natural consanguinity or affinity up to the second degree.

5. The adopting father or mother and the adopted; the latter and the surviving spouse of the former, and the former and the surviving spouse of the latter.

6. The legitimate descendants of the adopter with the adopted, while the adoption lasts.

7. Adulterers who have been condemned by a final judgment.

8. Those who have been condemned as authors, or as the author and accomplice, of the death of the spouse of either of them.

ART. 85. The government, with sufficient cause, may, at the instance of a party, waive the impediment mentioned in No. 2 of article 45; the third and fourth degrees of collaterals by legitimate consanguinity; the impediments arising from legitimate or natural affinity between collaterals, and those relating to the descendants of the adopter.

SECTION SECOND.—*Celebration of marriage.*

ART. 86. Those who, in accordance with article 42, desire to contract marriage in the manner determined in this code, shall present to the municipal judge of their domicile a declaration signed by both contracting parties, in which there shall be stated:

1. The names, surnames, age, profession, domicile or residence of the contracting parties.

2. The names, surnames, profession, domicile or residence of the parents.

Certificates of birth and of the status of the contracting parties, the consent or advice, if proper, and the dispensation, when it is necessary, shall accompany this declaration.

ART. 87. Marriages shall be celebrated in person, or by a proxy to whom a special power has been given; but the presence of the contract-

ing party who is domiciled or resides in the district of the judge who is to authorize the marriage shall always be required.

The name of the person with whom the marriage is to be celebrated shall be mentioned in the special power, and the marriage shall be valid if, before its celebration, the person so authorized should not have been notified in an authentic manner of the revocation of the power.

ART. 88. If the municipal judge selected for the celebration of the marriage should not be at the same time that of the domicile of both contracting parties, two declarations shall be presented, one to the municipal judge of each contracting party, stating which of the two judges they have selected for the celebration of the marriage, and in both courts the proceedings established in the following articles shall be pursued.

ART. 89. The municipal judge, after ratification of the contracting parties, shall order that edicts or proclamations be posted for fifteen days announcing the desire, with all the conditions mentioned in article 86, and calling upon those who have information of any obstacle to denounce it. Similar edicts shall be sent to the municipal judges of the towns in which the interested parties may have resided or been domiciled during the two previous years, requesting that they be posted in the place of the holding of their public court for the period of fifteen days, and that, after the lapse of this time, they return them with a certification of said requisite having been fulfilled and whether or not any obstacle has been denounced.

ART. 90. Soldiers in active service who intend to contract marriage shall be excused from the publication of such edicts outside of the place where they reside if they present a certificate that they are unmarried, issued by the commanding officer of the military body to which they belong.

ART. 91. If the interested parties are foreigners, and have not resided two years in Spain, they shall prove, by a certificate in due form, issued by a competent authority, that in the territory where they have had their domicile or residence during the two previous years the publication has been made of the marriage which they intend to contract, with all the formalities which are required in the former place.

ART. 92. In all other cases only the Government may waive the publication of the edicts on account of serious causes sufficiently proved.

ART. 93. Notwithstanding the provisions of the preceding articles, the municipal judge shall authorize the marriage of a person who is in imminent danger of death, whether he or she is domiciled in the place or is a transient.

This marriage shall be considered conditional until the previous freedom of the contracting parties is legally established.

ART. 94. Paymasters of men-of-war and captains of merchantmen shall authorize marriages which are celebrated on board in imminent danger of death. These marriages shall also be considered conditional.

ART. 95. The provisions of the preceding article are applicable to the commanders of military bodies in the field in the absence of a municipal judge with regard to the members of the same who desire to celebrate marriage *in articulo mortis.*

ART. 96. After the fifteen days referred to in article 89 have elapsed, without any obstacle having been denounced, the municipal judge having no knowledge of any, he shall proceed with the celebration of the marriage in the manner prescribed in this code.

If a year elapses from the publication of the edicts without the marriage taking place, it shall not be celebrated without a new publication.

ART. 97. If, before the celebration of the marriage, any person should appear opposing it and alleging a legal obstacle, or the municipal judge should have knowledge of any, the celebration of the marriage shall be suspended until the truth or falsity of the obstacle is declared in a final judgment.

ART. 98. All those who have knowledge of an intention to marry are obliged to denounce any obstacle known to them. The denunciation having been made, it shall be forwarded to the department of public prosecution, which, if it finds any legal foundation therefor, shall oppose the marriage. Only private parties who have an interest in preventing the marriage may personally institute the opposition, and in either case such opposition shall be carried out in accordance with the law of civil procedure, giving it the form of an interlocutory issue.

ART. 99. When, by a final judgment, the alleged obstacles are declared false, he who, taking them as a basis, instituted in his name the opposition to the marriage, shall be bound to make indemnity for damages and injuries.

ART. 100. The marriage shall be celebrated by the contracting parties appearing before the municipal judge, or one of them and the person to whom the absentee may have granted a special power to represent him or her, accompanied by two witnesses of age and without legal impediments.

Immediately thereafter the municipal judge, after reading articles 56 and 57 of this code, shall ask each one of the contracting parties if they persist in their decision to celebrate the marriage, and if he shall actually perform it; and if both reply affirmatively he shall draft the certificate of marriage with all the circumstances necessary to show that the requirements prescribed in this section have been complied with. The certificate shall be signed by the judge, by the contracting parties, by the witnesses, and by the clerk of the court.

Consuls and vice-consuls shall exercise the duties of municipal judges in marriages of Spaniards celebrated abroad.

SECTION THIRD.—*Annullment of marriage.*

ART. 101. The following marriages are void:

1. Those celebrated between the persons referred to in articles 83 and 84, except in cases of dispensation.

2. Those contracted by error as to the person, or by compulsion or intimidation, which avoids the consent.

3. Those contracted by the abductor with the abducted while she is in his power.

4. Those which are not celebrated by a competent municipal judge, or by the person who should act in his place, and without the presence of the witnessess required by article 100.

ART. 102. An action for the purpose of procuring the nullity of the marriage must be instituted by the spouses, by the department of public prosecution, or by any person whatsoever who may have any interest therein.

Cases of abduction, error, force, or intimidation are excepted, in which cases only the spouse who may have suffered therefrom may institute it; and that of impotency, in which the action appertains to either spouse and to the persons who may have an interest in the anullment.

The action lapses and marriages are confirmed in the respective cases if the spouses having lived together during six months after the error has disappeared or after the force or the cause of intimidation has ceased, or if, after the abducted party having recovered liberty, he or she should not have instituted a suit for nullity during said period.

ART. 103. The civil tribunals shall take cognizance of the suits for annullments of marriages celebrated in conformity with the provisions of this chapter, and shall adopt the measures indicated in article 68, and shall render final judgment.

SECTION FOURTH.—*Divorce.*

ART. 104. Divorce only produces the suspension of the life in common of the spouses.

ART. 105. The legitimate causes for divorce are:

1. Adultery on the part of the wife in every case; and on the part of the husband when public scandal or disgrace of the wife results therefrom.

2. Personal violence actually inflicted or grave insults.

3. Violence exercised by the husband toward the wife in order to force her to change her religion.

4. The proposal of the husband to prostitute his wife.

5. The attempts of the husband or wife to corrupt their sons or to prostitute their daughters, and connivance in their corruption or prostitution.

6. The condemnation of a spouse to perpetual chains or hard labor (*cadena ó reclusión perpetua*).

ART. 106. The innocent spouse only can petition for divorce.

ART. 107. The provisions of article 103 shall be applicable to suits for divorce and to their interlocutory issues.

TITLE V.

Paternity and filiation.

CHAPTER FIRST.

Legitimate children.

ART. 108. Children born after the one hundred and eighty days following that of the celebration of marriage and before the three hundred days following its dissolution or the separation of the spouses shall be presumed legitimate children.

Against this presumption no other proof shall be admitted than that of the physical impossibility of the husband to have had access to his wife during the first one hundred and twenty days of the three hundred next preceding the birth of the child.

ART. 109. A child shall be presumed to be legitimate, even though the mother should have declared against its legitimacy or should have been convicted of adultery.

ART. 110. The child born within the one hundred and eighty days following the celebration of a marriage shall be presumed to be legitimate if any of the following circumstances exist:

1. If the husband knew, before the marriage, that his wife was pregnant.
2. If he, being present, consented that in the certificate of birth his name be given the child borne by his wife.
3. If he has expressly or impliedly acknowledged the child as his own.

ART. 111. The husband or his heirs can disavow the legitimacy of a child born after the expiration of three hundred days from the dissolution of the marriage or the actual legal separation of the spouses, but both the child and the mother shall also have a right to prove in such cases the paternity of the husband.

ART. 112. The heirs can contest the legitimacy of the child in the following cases only:

1. If the husband died before the expiration of the term fixed for instituting his judicial action.
2. If he dies after bringing the suit without having withdrawn it.
3. If the child was born after the death of the husband.

ART. 113. The action to impugn the legitimacy of the child must be instituted within the two months following the record of the birth in the registry, should the husband be in the same place, or, in a proper case, any of his heirs.

When they are absent, the period shall be three months if they reside in Spain, and six if outside of Spain. When the birth of the child has been concealed, the period shall commence to be counted from the date of the discovery of the fraud.

ART. 114. Legitimate children have the right—

1. To bear the surnames of the father and of the mother.

2. To receive support from the same, from their ascendants, and, in certain cases, from their brothers, in accordance with article 143.

3. To the legal portion (*legitima*) and other successional rights granted them by this code.

CHAPTER SECOND.

Proofs of the filiation of legitimate children.

ART. 115. The filiation of legitimate children is proven by the record of the birth, entered in the civil registry, or by an authentic instrument, or a final judgment in the cases referred to in articles 110 to 113 of the preceding chapter.

ART. 116. In the absence of the documents mentioned in the preceding article, filiation shall be proven by the uninterrupted enjoyment of the status of a legitimate child.

ART. 117. In the absence of the record of birth, authentic document, final sentence, or enjoyment of status, legitimate filiation may be proven by any means, provided there is a foundation of proof in writing coming from both parents, either jointly or severally.

ART. 118. The action to claim its legitimacy may be brought by the child at any time of its life and shall be transmitted to its heirs, should it die during minority or in a state of insanity. In such cases the heirs shall be allowed a period of five years in which to institute the action.

The action already instituted by the child is transmitted by its death to the heirs, if it has not lapsed before then.

CHAPTER THIRD.

Legitimized children.

ART. 119. Only natural children can be legitimized.

Natural children are those born out of wedlock of parents who, at the time of the conception of the child, could have married with or without dispensation.

ART. 120. Legitimation shall take place—

1. By the subsequent marriage of the parents.
2. By royal concession.

ART. 121. Children shall only be considered as legitimized by a subsequent marriage when they have been acknowledged by the parents before or after the celebration thereof.

ART. 122. Those legitimized by a subsequent marriage shall enjoy the same rights as legitimate children.

ART. 123. Legitimation shall produce its effects in any case from the date of the marriage.

ART. 124. The legitimation of the children who died before the celebration of the marriage shall benefit their descendants.

ART. 125. For the legitimation by royal concession the following requisites are necessary:

1. That legitimation by subsequent marriage is not possible.

2. That it be asked by the parents or by one of them.

3. That the father or mother requesting it has no legitimate children, nor children legitimized by subsequent marriage, nor descendants of the same.

4. That if the person requesting it is married, he or she obtains the consent of the other spouse.

ART. 126. Legitimation by royal concession may also be obtained by the child whose deceased father or mother has expressed in his or her will or in a public instrument a wish to legitimize it, provided the condition established in No. 3 of the preceding article is complied with.

ART. 127. Legitimation by royal concession entitles the legitimized child:

1. To bear the surname of the father or mother who requested it.

2. To receive support from the same in the manner mentioned in article 143.

3. To the hereditary portion established in this code.

ART. 128. The legitimation may be impugned by those who consider their rights injured when it is granted to persons not having the legal status of natural children, or when the requirements mentioned in this chapter do not exist.

CHAPTER FOURTH.

Illegitimate children.

SECTION FIRST.—*Acknowledgment of natural children.*

ART. 129. A natural child may be acknowledged by the father and mother jointly or by only one of them.

ART. 130. In case the acknowledgment is made by one of the parents only, it shall be presumed that the child is a natural one if the person acknowledging it had at the time of the conception legal capacity to contract marriage.

ART. 131. The acknowledgment of a natural child shall be made in the record of birth, by will, or by any other public instrument.

ART. 132. When the father or mother shall make the acknowledgment separately, he or she shall not reveal the name of the person by whom the child was had, nor state any circumstance by which it may be discovered.

Public officials shall not authenticate any instrument violating this provision. If, notwithstanding this prohibition, they should do so, they shall incur a fine of 125 to 500 pesetas, and, besides, the words containing such revelation shall be stricken out officially.

ART. 133. A child of age can not be acknowledged without its consent.

When the acknowledgment of the minor is not made in the record of

birth or in a will, judicial approval, with a hearing of the Department of Public Prosecution, shall be required.

The minor may, in any case, contest the acknowledgment within the four years following his or her majority.

ART. 134. An acknowledged natural child has a right:

1. To bear the surname of the person acknowledging it.

2. To receive support from the same, in accordance with article 143.

3. To receive, in a proper case, the hereditary portion fixed in this code.

ART. 135. The father is obliged to acknowledge the natural child in the following cases:

1. When an indisputable paper written by him, expressly acknowledging his paternity, is in existence.

2. When the child is in uninterrupted enjoyment of the status of a natural child of the defendant father, justified by direct acts of the said father or of his family.

In cases of violation, ravishment, or rape, the provisions of the penal code shall be observed with regard to the acknowledgment of the issue.

ART. 136. The mother is obliged to recognize the natural child:

1. When the child is, with regard to the mother, included in any of the cases stated in the preceding article.

2. When the fact of the birth and the identity of the child are duly proven.

ART. 137. The actions for the acknowledgment of natural children can be instituted only during the life of the presumed parents, except in the following cases:

1. If the father or mother died during the minority of the child, in which case the latter may institute the action before the expiration of the first four years of its majority.

2. If, after the death of the father or mother, some instrument, before unknown, should be discovered in which the child is expressly acknowledged.

In this case the action must be instituted within the six months following the discovery of such instrument.

ART. 138. The acknowledgment of a child which does not have the condition of the second paragraph of article 119, or in which the prescriptions of this section have not been complied with, may be contested by those it injures.

SECTION SECOND.—*Other illegitimate children.*

ART. 139. Illegitimate children not in the enjoyment of the legal status of natural children shall only have the right to claim support from their parents in accordance with article 143.

ART. 140. The right to support, referred to in the preceding article, can only be claimed—

1. If the paternity or maternity is inferred from a final judgment rendered in a criminal or civil action.

2. If the paternity or maternity is shown in an indisputable document, from the father or mother, in which the filiation is expressly acknowledged.

3. With regard to the mother, if the fact of the birth and the identity of the child are fully proven.

ART. 141. With the exception of the cases mentioned in Nos. 1 and 2 of the preceding article, no judicial complaint shall be admitted, the purpose of which may be to investigate either directly or indirectly the paternity of illegitimate children who have not the legal status of natural children.

TITLE VI.

The support of relations.

ART. 142. By support is understood all that is requisite for maintenance, residence, clothing, and medical assistance, according to the social standing of the family.

Support includes also the education and instruction of the party receiving it when he or she is a minor.

ART. 143. The following are obliged to mutually support each other to the full extent fixed in the preceding article:

1. The spouses.
2. Legitimate ascendants and descendants.
3. Parents and children legitimized by royal concession and the legitimate descendants of the latter.
4. Parents and acknowledged natural children, and the legitimate descendants of the latter.

Parents and illegitimate children not having the legal status of natural children, owe each other, by way of support, all the help necessary for their subsistence. Parents, besides, are bound to bear the expenses of the elementary instruction of the children as well as the teaching of a profession, art, or trade.

Brothers and sisters also owe to legitimate brothers and sisters, even when only on the mother's or father's side, the necessary assistance for living, when by a physical or moral defect or for any other reason not chargeable to the recipient, the latter should not be able to support himself or herself. In this assistance is included, in a proper case, the necessary expenses to defray the costs of the elementary instruction and for the teaching of a profession, art, or trade.

ART. 144. The demand for support, when proper, and when two or more are obliged to give it, shall be made in the following order:

1. Of the spouse.
2. Of the descendants in the nearest degree.
3. Of the ascendants also in the nearest degree.
4. Of the brothers.

Between descendants and ascendants the graduation shall be regulated by the order in which they are called to the legitimate succession of the person entitled to support.

ART. 145. Whenever the obligation to support is charged on two or more persons, the payment of the pension shall be divided among them at a rate in proportion to their respective means.

However, in case of urgent necessity and in special circumstances the judge may force only one of them to pay it temporarily, without prejudice to his right to claim from the other parties obligated the portion that is due from them.

When two or more persons entitled thereto claim support at the same time, from the same person legally bound to give it, and such person has not sufficient means to pay for all, the order established in the preceding article shall be observed, unless the persons claiming the support are the spouse and a child subject to the parental authority, in which case, the latter shall be preferred to the former.

ART. 146. The amount of support, in the cases mentioned in the four numbers of article 143, shall be in proportion to the capital or means of the persons giving it and to the requirements of the recipient.

ART. 147. Support, in the cases to which the preceding article refers shall be reduced or increased proportionately according to the increase or reduction of the necessities of the recipient and the means of the person obliged to give it.

ART. 148. The obligation to give support may be enforced from the moment the person having a right to claim it requires it for his or her maintenance, but it shall be paid only from the date of the claim.

Payment shall be made monthly in advance, and when the recipient dies, his or her heirs shall not be obliged to refund what the latter may have received in advance.

ART. 149. The person obliged to give support may, at his option, do so either by paying the pension that may be fixed, or by receiving and supporting in his or her own home the person having a right thereto.

ART. 150. The obligation to support ceases with the death of the person obliged to give it, even if paying it in compliance with a final judgment.

ART. 151. The right to support can not be renounced or transferred to a third party. Neither can it be set off against what the recipient owes to the party obliged to give it.

But pensions for support in arrears may be set off and renounced, and the right to claim them may be transferred for a good or valuable consideration.

ART. 152. The obligation to give support shall cease:

1. By the death of the recipient.

2. If the means of the person obliged to pay it are reduced to such a point that he or she can not pay it without neglecting his or her own requirements and those of his or her family.

3. If the recipient is able to work at a trade, profession, or industry, or has obtained employment or improved his or her fortune in such a manner that the pension for support is not required for his or her support.

4. If the recipient, be he or be he not an heir by force of law, commits any offense which gives rise to disinheritance.

5. When the recipient is a descendant of the person obliged to give support, and the necessity of the former arises from bad conduct or from want of application to work, while such reason exists.

ART. 153. The foregoing provisions are applicable to the other cases in which, by this code, by will, or by agreement, a right to support may arise, excepting what is stipulated, ordered by the testator, or provided by law for the special case in question.

TITLE VII.

The parental authority.

CHAPTER FIRST.

General provision.

ART. 154. The father, and, in his absence, the mother, has authority over their legitimate children, not emancipated, and the children are bound to obey them while they remain under their authority and always to show them respect and reverence.

Acknowledged natural children and adopted minors are under the authority of the father or of the mother who acknowledges or adopts them, and must also comply with the obligations referred to in the preceding paragraph.

CHAPTER SECOND.

Effects of parental authority with regard to the persons of the children.

ART. 155. The father, and, in his absence, the mother, has, with regard to their children not emancipated—

1. The duty of supporting them, to keep them in their company, educate and instruct them in proportion to their means, and represent them in the exercise of all actions that may redound to their benefit.

2. The right to correct and punish them moderately.

ART. 156. The father, and, in a proper case, the mother, may request the assistance of the administrative authorities, which must be given to them in support of their own authority over their children, not emancipated, either within the domestic hearth or for the detention and even for the retention of the same in educational institutions or in institutions legally authorized to receive them.

They can also demand the intervention of the municipal judge for the purpose of imposing on their children, up to one month's detention in a correctional institution, devoted to that purpose, the order of the father or mother with the countersignature of the judge being sufficient for enforcing such detention.

The provisions of the two preceding paragraphs include children, either legitimate, legitimized, acknowleged, natural, or adopted.

ART. 157. When the father or mother has contracted a second marriage and the child should be born of a prior marriage, they must state to the judge the reasons for their decision to punish him or her, and the judge shall hear the child in person and decree or refuse to order the detention without appeal. The same thing shall be observed when the child, not emancipated, holds any position or works at any trade, even when the parents have not contracted a second marriage.

ART. 158. The father, and in a proper case the mother, shall pay for the support of the detained child; but they can not interfere in the management of the institution where it is detained, being only permitted to have it released when they deem proper.

CHAPTER THIRD.

Effect of parental authority with regard to the property of the children.

ART. 159. The father, or, in his absence, the mother, is the legal administrator of the property of the children who are under their authority.

ART. 160. The ownership of property which a child not emancipated may have acquired, or acquires by its work or industry or for any good consideration, is vested in the child, and the usufruct in the father or mother who has him or her under his or her authority and in his or her company; but if the child, with the consent of the parents, lives independently of them, he or she shall be considered as emancipated for all purposes with regard to said property and shall own it and enjoy the usufruct and administration thereof.

ART. 161. The ownership and usufruct of what the child acquires with the capital of his or her parents is vested in the latter; but should the parents expressly assign to him or her the whole or a part of the profits which he or she may obtain, such profits shall not be chargeable to the latter in the inheritance.

ART. 162. The ownership or usufruct of the property or income donated or left by will to a child not emancipated, to cover the cost of his or her education and instruction, is vested in him or her; but the father or the mother shall have the administration thereof if no other proviso has been made in the gifts or bequest, in which case the will of the donors shall be strictly observed.

ART. 163. The parents have, with regard to the property of the children, the usufruct or administration of which belongs to them, the obligations of every usufructuary or administrator and the special obligations established by section 3, title 5, of the mortgage law.

An inventory shall be made with the intervention of the department of public prosecution of the property of the children in which the parents have the administration only, and on the recommendation of the said department the judge may decree the deposit in public securities of the property belonging to the child.

ART. 164. The father, or the mother in a proper case, can not alienate the real property of the child, the usufruct or administration of which belongs to them, nor encumber the same, except for sufficient reasons of utility or necessity, and after authorization from the judge of the domicile, hearing the department of public prosecution, excepting the provisions which, with regard to the effects of transfers, the mortgage law establishes.

ART. 165. Whenever, in any matter, the father or mother may have an interest opposed to that of their children, not emancipated, a next friend shall be appointed for the latter, to represent them in court or otherwise.

The judge, on petition of the father or of the mother, of the said minor, of the department of public prosecution, or of any other person qualified to appear in court, shall appoint, as the next friend, the relative of the minor to whom the legitimate guardianship should belong in such cases, and, in the absence of the latter, another relative or any other person.

ART. 166. The parents who acknowledge or adopt children do not acquire the usufruct of their property, nor shall they have the administration of such property, unless they give bond for the results thereof to the satisfaction of the judge of the domicile of the minor or of the persons who must consent to the adoption.

CHAPTER FOURTH.

Manner of termination of the parental authority.

ART. 167. Parental authority terminates—

1. By the death of the parents or of the child.
2. By emancipation.
3. By the adoption of the child.

ART. 168. The mother who contracts a second marriage loses her parental authority over her children, unless the deceased husband, the father of the latter, should have in his will made express provision for the remarriage of his widow, and had ordered that in such case she was to preserve and exercise the parental authority over their children.

ART. 169. The father, and, in a proper case, the mother, loses the authority over their children—

1. When, by a final sentence in a criminal case, the said authority is taken away as a penalty.
2. When, by a final judgment in a suit for divorce, it is thus determined during the time the effects thereof are in force.

ART. 170. The parental authority is suspended by the incapacity or absence of the father or, in a proper case, of the mother, when judicially decided, and also by civil interdiction.

ART. 171. The courts may deprive the parents of the parental authority or suspend the exercise thereof when they treat their children with

excessive cruelty, or if they give them corrupting orders, advice, or examples. In these cases they can also deprive the parents, either totally or partially, of the usufruct of the property of the child, or take such steps as they may deem advisable for the interests of the latter.

ART. 172. If the widowed mother who has remarried becomes again a widow, she shall recover from that moment her authority over all the children not emancipated.

CHAPTER FIFTH.

Adoption.

ART. 173. Persons who are in the full enjoyment of their civil rights and have attained 45 years of age can adopt. The adopter must be at least fifteen years older than the adopted.

ART. 174. Adoption is forbidden—

1. To the clergy.
2. To those having legitimate or legitimized descendants.
3. To the guardian with regard to his ward, until his accounts have been finally approved.
4. To a spouse without the consent of his consort. Spouses may adopt jointly, and, with the exception of this case, nobody can be adopted by more than one person.

ART. 175. The adopted may use together with the surname of his or her family that of the adopter, this being stated in the deed of adoption.

ART. 176. The adopter and the adopted owe each other mutual support. This obligation is understood without prejudice to the preferred right of acknowledged natural children and of the ascendants of the adopter to be supported by the latter.

ART. 177. The adopter does not acquire any right whatsoever to inherit from the adopted. Neither does the adopted acquire any right to inherit from the adopter, except by will, unless the adopter in the deed of adoption has bound himself or herself to make said child his or her heir. This obligation shall produce no effect when the adopted dies before the adopter. The adopted retains all the rights belonging to him or her in his or her natural family excepting those relating to the parental authority.

ART. 178. The adoption shall be made with judicial authorization and the consent of the adopted, if of age, must necessarily be given; when a minor, that of the persons who must give consent to his or her marriage, and, when incapacitated, that of the guardian. The Department of Public Prosecution shall be heard on the matter; and the judge, after the proceedings he may consider necessary, shall approve the adoption, if it is according to law, and he believes it beneficial for the adopted.

ART. 179. After the adoption has been finally approved by the judge, an instrument shall be drafted stating therein the conditions with which it took place, and it shall be entered in the proper civil registry.

ART. 180. The minor or the incapacitated person who has bee adopted may contest the adoption within the four years following h or her majority or the date on which his or her incapacity ceased t exist.

TITLE VIII.

Absence.

CHAPTER FIRST.

Provisional measures in cases of absence.

ART. 181. When a person has disappeared from his domicile and hi whereabouts is unknown and without leaving any attorney to manag his property, the judge, at the instance of a lawful person or at that o the Department of Public Prosecution, may appoint some person t represent him in all that may be necessary.

The same shall be done when, under similar circumstances, the powe conferred by the absentee lapses.

ART. 182. After the appointment referred to in the preceding chap ter has been made, the judge shall take the necessary steps to secur the rights and interests of the absentee, and shall determine th powers, obligations, and remuneration of his representative, regulatin them, according to the circumstances, by the provisions relating t guardians.

ART. 183. The spouse who absents himself or herself shall be repre sented by the one present, whenever they are not legally separated.

If the spouse is a minor, a guardian shall be appointed in the usua manner.

In the absence of the spouse, the absentee shall be represented b the parents, children, or grandparents, in the order established i article 220.

CHAPTER SECOND.

Declarations of absence.

ART. 184. After two years have elapsed without any news of th absentee having been received, or from the receipt of the last news, an five years, in case the absentee has left a person in charge of the admi istration of his property, then the absence may be declared.

ART. 185. The declaration of absence may be demanded by—

1. The spouse who is present.

2. The heirs instituted in a will, who present a copy of the sam which is *prima facie* proof.

3. The relatives who are to inherit *ab intestato.*

4. Those having in the property of the absentee some right depen ing on the condition of his death.

ART. 186. The judicial declaration of absence shall produce no effe until six months after its publication in the official newspapers.

CHAPTER THIRD.

Administration of the property of an absentee.

ART. 187. The administration of the property of the absentee is to be given, according to the order established in article 220, to the persons specified therein.

ART. 188. The wife of the absentee, if of age, may freely dispose of the property of any kind whatsoever belonging to her, but she can not alienate, exchange, or mortgage the husband's private property, nor that of the conjugal partnership, except with judicial authorization.

ART. 189. When the administration appertains to the children of the absentee and they are minors, a guardian shall be appointed for them who shall take charge of the property with the legal formalities.

ART. 190. The administration shall cease in any of the following cases:

1. When the absentee appears, either in person or through an attorney.

2. When the death of the absentee is proved and his testamentary or intestate heirs appear.

3. When a third party appears proving by proper instruments that he has acquired the property of the absentee by purchase or in any other manner.

In such cases the administrator shall cease in the discharge of his duties and the property shall be placed at the disposal of those having a right thereto.

CHAPTER FOURTH.

Presumption of the death of the absentee.

ART. 191. After thirty years have elapsed from the date of the disappearance of the absentee or since the last news was received of him, or ninety years from his birth, the judge, at the instance of an interested party, shall declare the presumption of his death.

ART. 192. The judgment declaring the presumption of death of an absentee shall not go into effect until after six months, counted from its publication in the official newspapers.

ART. 193. After the judgment of the presumption of death has been declared final, succession to the estate of the absentee shall be opened and its distribution shall be adjudicated with the formalities of testamentary or intestate proceedings, as the case may be.

ART. 194. Should the absentee appear, or, if without appearing, his existence be proven, he shall recover his property in its condition at the time and the value of that conveyed, or that acquired thereby; but he can claim neither the profits nor the income.

CHAPTER FIFTH.

Effects of absence upon the eventual rights of the absentee.

ART. 195. The person claiming a right belonging to another person, whose existence is not acknowledged, is bound to prove that such other person existed at the time his existence was necessary to acquire the same.

ART. 196. Without prejudice to the provisions contained in the preceding article, when a succession has been opened in which an absentee is interested, the share of the absentee shall accrue to his coheirs, unless there is some person having rights of his own to claim it. Both the former and the latter, in a proper case, must make an inventory of said property with the intervention of the department of public prosecution.

ART. 197. The provisions of the foregoing article are to be understood without prejudice to proceedings by petition of inheritance or other rights of the absentee, and of his personal or legal representatives. Such rights shall not be extinguished, except by the lapse of time fixed for prescription. In the record to be made in the registry of the real property, which may accrue to the coheirs, there shall be stated that it is subject to the provisions of this article.

ART. 198. Those who have taken possession of the estate shall become owners of the income received in good faith. While the absentee does not appear his rights shall not be exercised by his personal or legal representatives.

TITLE IX.

Guardianship.

CHAPTER FIRST.

General provisions.

ART. 199. The object of guardianship is the custody of the person and property or only of the property of those who, not being under the parental authority, are incapable of taking care of themselves.

ART. 200. The following are subject to guardianship:

1. Minors not legally emancipated.
2. Insane and demented persons, even though they have lucid intervals, and the deaf and dumb who do not know how to read and write.
3. Those who have been declared prodigal by a final judgment.
4. Those who are suffering the penalty of civil interdiction.

ART. 201. Guardianship shall be exercised by a single guardian under the surveillance of a protutor[1] and the family council.

ART. 202. The offices of guardian and protutor can not be renounced unless for a lawful cause duly proven.

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[1] A person managing the business of a minor, although not appointed as guardian.

ART. 203. The municipal judges of the places in which persons subject to guardianship reside shall provide for their care and that of their personal property until a guardian is appointed, when there is no other person charged with these duties under the law.

Should they not do so they shall be liable for the damages suffered by minors or by incapacitated persons by reason thereof.

ART. 204. Guardianship is conferred—

1. By will.
2. By law.
3. By the family council.

ART. 205. The guardian shall not enter upon the discharge of his duties until his appointment has been recorded in the registry of guardianships.

CHAPTER SECOND.

Testamentary guardianship.

ART. 206. The father may appoint a guardian and a protutor for his minor children or for those of age who are incapacitated, be they legitimate or acknowledged natural, or for any of his illegitimate children whom he is obliged to support, according to article 139.

The mother has the same privilege, but if she has contracted a second marriage the appointment made by her for the children of her first marriage shall not be valid without the approval of the family council.

In any case it shall be necessary that the person appointed guardian or protutor be not subject to the authority of any other person.

ART. 207. A guardian may also be appointed for minors or incapacitated persons by the person leaving them an inheritance or an important legacy. The appointment, however, shall not be valid until the family council has decided to accept the inheritance or legacy.

ART. 208. The father as well as the mother may appoint a guardian for each one of their children, and make different appointments in order that the appointees may substitute one another.

In case of doubt, there shall be understood that a single guardian has been appointed for all the children, and the position shall be conferred upon the first of those named in the appointment.

ART. 209. If different persons should have appointed a guardian for the same minor, the position shall devolve upon:

1. The one designated by the father or by the mother.
2. The one appointed by the stranger who has made the minor or incapacitated person his heir, if the amount of the inheritance is important.
3. The one who has been designated by the person leaving an important legacy.

If there is more than one guardian in any of the cases of Nos. 2 and 3 of this article, the family council shall declare which one is to be preferred.

ART. 210. When a guardian is in the discharge of his duties and the one appointed by the father appears, the guardianship shall immediately be transferred to the latter. If the guardian who appears is the one appointed by a stranger, included in numbers 2 and 3 of the preceding article, he shall limit himself to the administration of the property of the person who appointed him until the incumbent guardian vacates.

CHAPTER THIRD.

Legitimate guardianship.

SECTION FIRST.—*Guardianship of minors.*

ART. 211. Legitimate guardianship of minors, not emancipated, appertains solely—

1. To the paternal grandfather.
2. To the maternal grandfather.
3. To the paternal and maternal grandmothers, in the same order, while they remain widows.
4. To the eldest of the male brothers of full blood, and, in the absence of the latter, to the eldest of the brothers on the paternal or maternal side.

The guardianship referred to in this article does not apply to illegitimate children.

ART. 212. Heads of foundling institutions are the guardians of those kept and educated therein. The representation in court of such officials as guardians shall be assumed by the department of public prosecution.

SECTION SECOND.

Guardianship of the insane and of the deaf and dumb.

ART. 213. No guardians shall be appointed for insane, demented, and deaf and dumb persons of age without a previous declaration to the effect that they are incapable of managing their property.

ART. 214. This declaration may be asked for by the spouse and by the relatives of the person presumed to be incapacitated who may have rights to succeed him in case of intestacy.

ART. 215. The department of public prosecution must demand it:

1. When the person in question is a raving maniac.
2. When none of the persons mentioned in the preceding article exists, or when they do not make use of the privilege granted them therein.
3. When the spouse and the heirs of the person presumed to be incapacitated are minors or lack the personality necessary in order to appear in court.

In all these cases the court shall appoint a next friend for the person presumed to be incapacitated, who does not wish or can not defend himself. In all other cases the department of public prosecution shall defend them.

ART. 216. The courts, before declaring the incapacity, shall hear the family council and shall personally examine the persons complained of as incapacitated.

ART. 217. The relatives who have requested the declaration of incapacity can not give information to the court as members of the family council; but they have a right to be heard by the latter when they demand it.

ART. 218. The declaration of incapacity shall be made summarily. The one which refers to the deaf and dumb shall fix the extent and limits of the guardianship according to their degree of incapacity.

ART. 219. Against the decrees terminating the proceedings for incapacity the interested parties may institute an ordinary suit. The next friend of the incapacitated person shall, however, require special authorization therefor from the family council.

ART. 220. The guardianship of the insane and of the deaf and dumb appertains:

1. To the spouse not legally separated.
2. To the father, and, in a proper case, to the mother.
3. To the children.
4. To the grandparents.
5. To the brothers and to the unmarried sisters, with due preference to the double relationships stated in No. 4 of article 211.

If there are several children, brothers or sisters, the male shall be preferred to the female, and the oldest to the youngest.

When there are both paternal and maternal grandparents, the male shall also be preferred; and in case they are of the same sex, those of the paternal line.

SECTION THIRD.

Guardianship of prodigals.

ART. 221. The declaration of prodigality must be made in a suit in which both parties were given a hearing.

The judgment shall determine the acts which are forbidden to the incapacitated person, the powers which the guardian is to exercise in the name of the former, and the cases in which one or the other is bound to consult the family council.

ART. 222. The declaration, referred to in the preceding article, can be demanded only by the spouse and by the compulsory legal heirs of the prodigal, and in exceptional cases by the department of public prosecution, either at its own instance or at that of some relative of the former, when they are minors or incapacitated persons.

ART. 223. When the defendant does not appear at the trial he shall be represented by the department of public prosecution, and if the latter be a party thereto, by a next friend appointed by the court, without prejudice to the provisions of the law of civil procedure with regard to proceedings in default.

ART. 224. The declaration of prodigality does not deprive the prodigal of the marital and parental authority, nor does it give the guardian any authority over the person of the prodigal.

ART. 225. The guardian shall administer the property of the children whom a prodigal may have had from a previous marriage.

The wife shall administer her dowry and parapherna, the property of the children in common, and that of the conjugal partnership. She requires judicial authorization to sell the same.

ART. 226. The acts of a prodigal, prior to the request for interdiction, can not be contested on account of prodigality.

ART. 227. The guardianship of the prodigal appertains—

1. To the father, and, in a proper case, to the mother.
2. To the paternal and maternal grandparents.
3. To the eldest of the emancipated male children.

SECTION FOURTH.

Guardianship of persons suffering interdiction.

ART. 228. When the judgment in which a penalty of interdiction is imposed, is final, the department of public prosecution shall demand that articles 203 and 293 be complied with. Should the representative of said department not do so he shall be liable for the damages and injuries caused thereby.

The spouse and the intestate heirs of him so interdicted may also demand it.

ART. 229. This guardianship shall be limited to the administration of the property and to the representation in court of the interdicted person.

The guardian of the interdicted person shall be obliged, furthermore, to care for the person and property of the minors or incapacitated persons who are under the authority of the person subject to interdiction, until another guardian is provided for them.

The wife of the interdicted person shall exercise the parental authority over their common children while the interdiction lasts.

If she is a minor she shall act under the direction of her father and, in a proper case, that of her mother, and in the absence of both, that of her guardian.

ART. 230. The guardianship of those suffering interdiction is granted in accordance with the order established in article 220.

CHAPTER FOURTH.

Guardianship by appointment.

ART. 231. Should there be neither testamentary guardians, nor persons called by law to the exercise of a vacant guardianship, it is the duty of the family council to elect the guardian in all the cases mentioned in article 200.

ART. 232. The municipal judge who neglects to call a meeting of the family council in any case in which a guardian must be provided for minors or incapacitated persons, shall be liable for the damage or injury caused by his negligence.

CHAPTER FIFTH.

Protutors.

ART. 233. The family council is entitled to appoint a protutor when he has not been appointed by those who have a right to elect a guardian for minors.

ART. 234. The guardian can not begin to exercise guardianship until a protutor has been appointed. If he fails to apply for this appointment, he shall be removed from the guardianship and shall be liable for the damages suffered by the minor.

ART. 235. The appointment of a protutor shall not be given to a relative of the same line as the guardian.

ART. 236. The protutor shall—

1. Supervise the inventory of the property of the minor and the constitution of the bond of the guardian, when proper.

2. Enforce the rights of the minor in and out of court whenever they are opposed to the interests of the guardian.

3. Call the attention of the family council to the management of the guardian, whenever he may consider it prejudicial to the person or to the interests of the minor.

4. Call a meeting of the family council for the appointment of a new guardian when the guardianship is vacant or has been abandoned.

5. Discharge the other duties provided by law.

The protutor shall be liable for the damages and injuries caused to the minor by his omission or negligence in complying with such duties.

The protutor may attend the deliberations of the family council and take part therein, but he has no right of vote.

CHAPTER SIXTH.

Persons disqualified to be guardians and protutors and removal of the same.

ARTICLE 237. The following can not be guardians or protutors:

1. Those subject to guardianship.

2. Those who have been punished for the crimes of robbery, theft, fraud, forgery, corruption of minors, or public scandal.

3. Those condemned to any corporeal punishment, while they remain under sentence.

4. Those who have been legally removed from a prior guardianship.

5. Persons of bad conduct, or those having no visible means of support.

6. Bankrupts and insolvents, not discharged.

7. Women, with the exception of the cases in which they are expressly designated by law.

8. Those who, at the time of taking charge of the guardianship, have a lawsuit pending with the minor in regard to his civil status.

9. Those in litigation with the minor in regard to the ownership of his property, unless the father and, in a proper case, the mother, being aware thereof, have disposed otherwise.

10. Those owing the minor large sums, unless they have been appointed by the father and, in a proper case, by the mother, with knowledge of the debt.

11. The relatives mentioned in the second paragraph of article 293, and the testamentary guardians who may not have fulfilled the obligation imposed upon them by said article.

12. Professed members of monastic orders.

13. Foreigners not residing in Spain.

ART. 238. The following shall be removed from guardianship:

1. Those who, after having qualified, are included in one of the cases of incapacity mentioned in numbers 1, 2, 3, 4, 5, 6, 8, 12, and 13 of the foregoing article.

2. Those who have assumed the administration of the guardianship without calling the family council nor having asked for the appointment of a protutor, or without having given bond, in a proper case, and not having recorded the mortgage security.

3. Those who have not made the inventory within the period and in the manner prescribed by law or have not made it faithfully.

4. Those who have not behaved properly in the discharge of the guardianship.

ART. 239. The family council shall not declare the incapacity of guardians and protutors or order their removal without summoning and hearing them if they appear.

ART. 240. After the incapacity has been declared or the removal has been ordered by the family council the decision shall be considered final, and the vacant guardianship shall be filled if the guardian does not institute his claims before the court within the fifteen days following that on which the decision was communicated to him.

ART. 241. When the guardian institutes a judicial suit the council shall litigate it, at the expense of the minor; but the members thereof may be personally adjudged to pay the costs, if they have acted with well-known malice.

ART. 242. When the decision of the family council is favorable to the guardian, and has been unanimously adopted, no remedy whatsoever shall be entertained against it.

ART. 243. If, by reason of incapacity, the guardian should not enter upon the discharge of his duties, the family council shall attend to the duties of the guardianship until a final decision is adopted with regard to the obstacle.

If the guardian has already entered upon the discharge of his duties, and the family council declares his incapacity or orders his removal, the

decisions it may adopt to provide for the duties of the guardianship, in case of litigation, shall not be carried out without previous judicial approval.

CHAPTER SEVENTH.

Excuses for not accepting guardianship and protutorship.

ART. 244. The following may excuse themselves from guardianship and protutorship:

1. The ministers of the Crown.
2. The presidents of the colegislative houses, of the council of state, of the supreme court, of the supreme council of war and navy, and of the court of accounts of the Kingdom.
3. Archbishops and bishops.
4. Associate justices, judges, and officials of the department of public prosecution.
5. Those who exercise authority immediately depending on the Government.
6. Military men in active service.
7. Clergymen in charge of parishes.
8. Those having under their authority five legitimate children.
9. Those who are so poor that they can not attend to the guardianship without impairing their livelihood.
10. Those who in consequence of continuous ill health or because of inability to read or write can not well fulfill the duties of the charge.
11. Persons over sixty years of age.
12. Persons who are already guardians or protutors of another person.

ART. 245. Those who are not relatives of the minor or incapacitated person, are not obliged to accept the guardianship, if, within the territory of the court appointing the guardian, there are relatives within the sixth degree who may discharge said duties.

ART. 246. The person excused, may, at the request of the guardian or protutor, be compelled to accept the guardianship as soon as the cause for the exemption has ceased to exist.

ART. 247. An excuse, which has not been given before the family council at the meeting held for the purpose of deciding upon the guardianship, shall not be admitted.

If the guardian was not present at the meeting of the council, or was not previously informed of his appointment, he must make the excuse within the ten days following the date on which he has been notified thereof.

ART. 248. If the causes of exemption should be subsequent to the acceptance of the guardianship, the period for making them shall begin to be counted from the day on which the guardian may have had knowledge thereof.

ART. 249. The resolution by which the family council rejects an excuse may be impugned before the courts within the period of fifteen days.

The resolution of the family council shall be enforced by the s
at the expense of the minor; but if it should be confirmed, the per
instituting the suit shall be adjudged to the payment of the costs.

ART. 250. During the pendency of the suit to be excused the per
instituting the same shall be obliged to exercise the guardiansl
Should he not do so, the family council shall appoint some person
substitute him, and the person substituted shall be liable for the m
agement of the substitute in case the excuse is not accepted.

ART. 251. The testamentary guardian who excuses himself from
guardianship shall lose whatever may have been voluntarily left
by the person who appointed him.

CHAPTER EIGHTH.

Bonds of guardians.

ART. 252. A guardian before assuming the guardianship shall
bond as security for a faithful discharge of his duties.

ART. 253. The bond must be secured either by a mortgage or
pledge.

A personal bond shall be accepted only when it is impossible to
one of the above bonds. The security given by the bondsmen shall
prevent the adoption of any decisions advisable for the preservatio
the property of the minor or incapacitated person.

ART. 254. The bond shall secure:

1. The value of the personal property which may come into the pos
sion of the guardian.

2. The income or profits which the property of the minor or incap
tated person may produce during one year.

3. The profits which the minor may receive from any commercia
industrial enterprise during one year.

ART. 255. The guardian may appeal to the courts from the res
tions of the family council fixing the amount or qualifying the bo
but he shall not take possession of his office without having given
bond required of him.

ART. 256. Until the bond is executed the protutor shall discha
the administrative functions which the family council may consi
indispensable for the safe-keeping of the property and the collect
of its proceeds.

ART. 257. The mortgage bond shall be recorded in the Registr
Property. The pledge bond shall be constituted by the deposit
securities or bonds in the public institutions authorized for this
pose.

ART. 258. The record or deposit shall be demanded:

1. By the guardian.

2. By the protutor.

3. By any of the members of the family council.

Those not doing so shall be liable for the loss and damage by rea
thereof.

ART. 259. The bond may be increased or reduced, during the exercise of the guardianship, according to the fluctuations suffered by the capital of the minor or incapacitated person and by the securities of which the bond is constituted.

The bond can not be totally canceled until after the accounts of the guardianship are approved and the guardian has extinguished all the liabilities of his management.

ART. 260. The following are exempted from giving bond for guardianship:

1. The father, the mother, and the grandparents, in the cases in which they are designated to the guardianship of their descendants.

2. The testamentary guardian, released by the father, or by the mother in a proper case, from this obligation. This exception shall cease when, subsequently to his appointment, causes not considered by the testator should arise which make the bond necessary, in the opinion of the family council.

3. A guardian appointed, without requiring bond, by a stranger who may have made the minor or incapacitated person his heir or left him an important legacy. In such case the exemption shall be limited to the property or income of which the inheritance or legacy consists.

CHAPTER NINTH.

Exercise of the guardianship.

ART. 261. The family council shall give possession to the guardians and protutors.

ART. 262. The guardian represents the minor or incapacitated person in all civil acts, with the exception of those which the latter may execute personally by express provision of law.

ART. 263. Minors and incapacitated persons subject to guardianship owe respect and obedience to the guardian. He may punish them in moderation.

ART. 264. The guardian is obliged—

1. To support and educate the minor or incapacitated person in accordance with his condition and with strict subjection to the orders of his or her parents, or, in the absence of the latter, to those which the family council may have adopted.

2. To endeavor, in any manner whatsoever possible, with the means of the insane, demented, or deaf and dumb to acquire or recover their capacity.

3. To make an inventory of the property which the guardianship may cover within the period fixed for this purpose by the family council.

4. To administer the estate of the minor or incapacitated person with the diligence of a good father of a family.

5. To ask at the proper time the authorization of the family council for all that he can not do without it.

6. To request the assistance of the protutor in all the cases in which the law requires it.

ART. 265. The inventory shall be made with the assistance of the protutor and in the presence of two witnesses selected by the family council. The latter shall decide, according to the importance of the estate, if the inventory is, in addition, to be authorized by a notary.

ART. 266. The jewelry, valuable personal property, public securities, and commercial and industrial securities, which, in the judgment of the family council should not be in the possession of the guardian, shall be deposited in an institution established for this purpose.

The other personal property and chattels, if not appraised, shall be appraised by experts appointed by the family council.

ART. 267. The guardian, who, having been summoned for this purpose through a notary by the protutor or by the witnesses, should not enter in the inventory the credits he holds against the minor, shall be understood as renouncing them.

ART. 268. When the will of the person who appointed the guardian should make no mention of the allowance for support of the minor or incapacitated person, the family council, in view of the inventory, shall decide the part of the income or profit which shall be inverted therein.

This resolution may be modified in proportion to the increase or decrease of the inheritance of the minor or incapacitated person or when the condition of the latter changes.

ART. 209. The guardian requires the authority of the family council:

1. To impose on the minor the punishments referred to in number 2 of article 155, and in article 156.

2. To give to the minor a particular profession or trade when this has not been decided by the parents, and to modify the provisions they may have adopted.

3. To place the incapacitated person in a sanatorium, unless the guardianship is exercised by the father, the mother, or by a son.

4. To continue the commerce or industry in which the incapacitated person or his ascendants or those of the minor may have been engaged.

5. To alienate or encumber the property constituting the capital of minors or incapacitated persons, or to make contracts or execute instruments subject to record.

6. To invest any money remaining each year, after meeting the obligations of the guardianship.

7. To proceed with the distribution of the inheritance or of any other thing which the minor or incapacitated person may possess in common.

8. To withdraw from deposit any sum producing interest.

9. To loan and borrow money.

10. To accept without the benefit of inventory any inheritance or to repudiate the latter or the gifts.

11. To incur extraordinary expenses in connection with the estates, the administration of which is included in the guardianship.

12. To compromise and submit to arbitration the questions in which the minor or incapacitated person may be interested.

13. To institute suits in the name of persons subject to guardianship, and to have recourse by appeal and cassation against the judgments in which they may have been rendered.

Complaints and recourses in verbal suits are excepted.

ART. 270. The family council can not authorize the guardian to alienate or encumber the property of the minor or incapacitated person unless it be for reasons of necessity or utility, which the guardian shall duly prove.

This authority shall be exercised in regard to specified things.

ART. 271. The family council, before granting authorization to encumber real property or constitute property rights in favor of third persons, may previously hear the opinion of experts with regard to the conditions of the encumbrance and possibilities of bettering it.

ART. 272. If real property, rights subject to record, jewelry, or personal property the value of which is over 4,000 pesetas, is in question, the alienation thereof shall be made at public auction with the intervention of the guardian or protutor.

Securities quoted on exchange, public as well as commercial or industrial, shall be sold by an exchange agent or by a commercial broker.

ART. 273. The guardian is liable for the legal interest on the capital of the minor, if by his omission or negligence it should remain unproductive or without investment.

ART. 274. The authorization to settle or compromise through arbitration must be requested in writing, the guardian stating all the conditions and advantages of the transaction.

The family council may receive the report of one or more lawyers, according to the importance of the matter, and shall grant or refuse such authorization. In case of granting it, it shall be stated in the instrument.

ART. 275. Guardians are forbidden—

1. To give or renounce things or rights belonging to the minor or incapacitated person.

Gifts made by reason of marriage by minors, with the approval of the persons who are to give their consent to the marriage, shall be valid, provided they do not exceed the limits fixed by law.

2. To collect from the debtors of the minor or incapacitated person, without the intervention of the protutor, amounts over 5,000 pesetas, unless they consist of interests, profits, or income.

Payments made without this requisite shall be valid with regard to the debtors, only when they prove that the amount received was invested for the benefit of the minor or incapacitated person.

3. To pay, without the intervention of the protutor, any sums due themselves.

4. To buy themselves, or through another person, the property of the minor or incapacitated person, unless they have been expressly authorized thereto by the family council.

ART. 276. The guardian is entitled to compensation from the prop erty of the minor or incapacitated person—

When it has not been fixed by those who appointed the testamentary guardian; or when the guardians are legitimate or appointed by the court, the family council shall fix it, taking into consideration the amount of the property and the labor entailed in its administration.

In no case shall the compensation be less than 4 per cent nor more than 10 per cent of the net income or proceeds of the property.

The guardian may appeal to the courts from the decision fixing his compensation.

ART. 277. Should the family council maintain its decision, it shall lit igate at the expense of the minor or incapacitated person.

ART. 278. The guardianship terminates—

1. When the minor attains the age of twenty-three years, by qualifi cation as to age, and by adoption.

2. By the cessation of the causes giving rise thereto, when incapaci tated persons subject to interdiction or prodigals are in question.

CHAPTER TENTH.

Accounts of the guardianship.

ART. 279. Collateral relatives of the minor or incapacitated perso and strangers who have not obtained the appointment of guardia with the assignment of proceeds for support, shall render to the famil council annual accounts of their administration.

These accounts, after being examined by the protutor and audited b the council, shall be deposited in the office of the clerk of the cou where the guardianship has been registered.

If the guardian does not agree to the decision of the council, he ma apply to the courts in which the interests of the minor or incapacitate person shall be defended by the protutor.

ART. 280. The guardian, who may be replaced by another, shall, well as his heirs, be obliged to render a general account of his guardia ship to the one taking his place, which shall be examined and audit in the manner prescribed in the preceding article. The new guardi shall be liable to the minor for any losses and damages, should he n demand and examine the accounts of his predecessor.

ART. 281. When the guardianship terminates, the guardian or heirs are obliged to render an account of the administration to the p son who may have been subject thereto or to his personal or le representatives.

ART. 282. The general accounts of the guardianship shall be audi and passed upon by the family council within a period not exceed six months.

ART. 283. The accounts shall be accompanied by the proper vouch The only expenses which need not be proved are the minor ones which a diligent father of a family does not generally ask a receipt.

.RT. 284. The expenses of rendering the accounts shall be borne by minor or incapacitated person.

.RT. 285. The legal representatives of the minor, or the latter if of , can not enter into any agreement with the guardian relating to administration of the guardianship until fifteen days have elapsed ce the accounts duly proven were rendered.

'he family council, without prejudice to the agreements the interested ·ties may come to after the expiration of this period, shall complain the courts of any wrong which may have been committed by the ardian in the exercise of the guardianship.

ART. 286. The balance appearing from the general accounts in favor or against the guardian shall earn legal interest.

In the first case, from the time payment is requested of the minor, ter the delivery of his property.

In the second case, from the date of rendering the accounts, if they ere rendered within the legal period, and, if not, from the expiration ıereof.

ART. 287. The actions, which may mutually be brought by the guarian and the minor by reason of the exercise of the guardianship, are xtinguished five years after the termination of the latter.

CHAPTER ELEVENTH.

Registration of guardianships.

ART. 288. In the courts of first instance there shall be one or more ›ooks in which there shall be entered the guardianships constituted luring the year within their respective territories.

ART. 289. These books shall be in charge of a judicial clerk, who ıhall make the entries gratuitously.

ART. 290. The record of each guardianship shall contain—

1. The name, surname, age, and domicile of the minor or incapacitated ›erson, and the extent and limit of the guardianship when the incapacity has been judicially declared.

2. The name, surname, profession, and domicile of the guardian, and ı statement as to whether he is a testamentary or legitimate guardian ›r was appointed by the court.

3. The date on which the guardianship was conferred, and the day on which the bond required of the guardian was given, stating, in a proper case, the kind of property in which it was constituted.

4. The allowance for support which may have been assigned the minor or incapacitated person or the statement that proceeds for support have been allowed.

ART. 291. At the foot of each record there shall be entered at the beginning of the judicial year whether the guardian has rendered an account of his administration, in case he is obliged to do so.

ART. 292. The judges shall examine these registries every year, and shall take the necessary steps in each case to protect the interests of the persons subject to guardianship.

TITLE X.

THE FAMILY COUNCIL.

SECTION FIRST.—*Manner of constituting the family council.*

ART. 293. If the department of public prosecution or the municipal judge should have knowledge that in the territory under their jurisdiction there exists any of the persons referred to in article 200, the former shall request and the latter shall order, of his own motion, or at the instance of the public prosecutor, according to the cases, the constitution of a family council.

The following are obliged to advise the municipal judge of any act which gives rise to a guardianship, as soon as they have knowledge thereof: the testamentary guardian, the relatives called to the legitimate guardianship, and those who, according to law, are members of the council; being liable, should they not do so, to indemnify losses and damages.

The municipal judge shall cite the persons who are to compose the family council, informing them of the purpose of the meeting, and the day, hour, and place where it shall be held.

ART. 294. The family council shall be composed of the persons whom the father, or the mother, in a proper case, may have designated in the will, and, in the absence thereof, of the male ascendants and descendants, and of the brothers and husbands of the living sisters of the minor or incapacitated person, whatever their number may be. If it is less than five, this number shall be made up with the nearest male relatives of both the paternal and maternal lines; and, should there not be any or should they not be bound to form part of the council, the municipal judge shall appoint in their place honest persons, preferring the friends of the parents of the minor or incapacitated person.

Should there be no ascendants, descendants, brothers, or husbands of living sisters, the municipal judge shall form the council with the five nearest male relatives of the minor or incapacitated person, and, should there not be the full number of relatives, or any, he shall substitute them with honest persons, preferring always the friends of the parents.

ART. 295. In case of equal degree of relationship, preference shall be given in forming the family council to the oldest relative.

ART. 296. The courts may remedy the nullity which may arise by reason of the nonobservance of the preceding articles, if not due to fraud nor injuring the person or property of the person subject to guardianship, but correcting the error committed in the formation of the council.

ART. 297. The relatives of the minor or incapacitated person designated by law, who do not reside within a radius of 30 kilometers of the court having jurisdiction over the guardianship, shall not be forced to form part of the council; but they shall be members of the council

if they voluntarily appear to accept the duty, for which purpose they must be cited by the municipal judge.

ART. 298. The causes which excuse, disqualify, and give rise to the removal of guardians and protutors are applicable to the members of the family council. Neither can the persons excluded in their wills from this duty by the father or by the mother, in a proper case, be members thereof.

ART. 299. The guardian and protutor can not be at the same time members of the family council.

ART. 300. The meeting for the formation of the family council shall be presided over by the municipal judge. The persons cited are obliged to appear in person or through a special attorney, who can never represent more than one person. Should they not appear, the judge may impose upon them a fine not to exceed 50 pesetas.

ART. 301. After the family council has been constituted by the municipal judge it shall proceed to prescribe all the measures necessary to take care of the person and property of the minor or incapacitated person and to constitute the guardianship.

ART. 302. The family council for natural children shall be constituted under the same rules as that for legitimate children, but appointing as members thereof the relatives of the father or mother who may have acknowledged them.

That of other illegitimate children shall be composed of the public prosecutor, who shall be the president, and four honest neighbors.

ART. 303. The administration of every charitable institution shall have over the orphans in the same who are minors all the powers corresponding to guardians and to the family council.

SECTION SECOND.—*Method of procedure by the family council.*

ART. 304. The member elected by the other members shall be the president of the council.

It is the duty of the president—

1. To call a meeting of the council whenever he considers it advisable, or at the request of the members, of the guardian, or of the protutor, and to preside over its deliberations.

2. To draft and to give the reasons for the resolutions, recording the opinion of each member, requiring said members to authenticate the minutes with their signatures.

3. To carry out the resolutions.

ART. 305. The family council shall not adopt resolutions on matters submitted to them unless three members at least are present.

Resolutions shall always be adopted by a majority of votes.

The vote of the president shall decide in case of a tie.

ART. 306. The members of the family council are obliged to attend the meetings of the same to which they may have been called. Should

they not attend, nor give any legitimate excuse, the president of the council shall inform the municipal judge thereof, who may impose on them a fine not exceeding 50 pesetas.

ART. 307. No member of the family council shall attend its meetings, nor cast a vote, when a matter is in question in which he, his descendants, ascendants, or spouse has any interest, but he may be heard if the council deems it advisable.

ART. 308. The guardian and the protutor are obliged to attend the meetings of the family council whenever cited, but shall have no vote. They may also attend if the council meets at their request.

The person subject to guardianship has a right to attend and to be heard, provided he is over 14 years of age.

ART. 309. The family council shall take cognizance of matters of their competency, in accordance with the provisions of this code.

ART. 310. The members who may have dissented from the majority in voting on any resolution, as well as the guardian or protutor, or any relative of the minor or other person interested in the decision, with the exception of the case of article 242, may appeal to the judge of first instance.

ART. 311. At the conclusion of the guardianship, and the consequent dissolution of the family council, the latter shall deliver the minutes of its sessions to the person who was subject to guardianship, or to the person representing his rights.

ART. 312. The members of the family council are liable for the damages which the person subject to guardianship may suffer by reason of their malice or culpable negligence.

The members who may have dissented from the resolution causing the injury shall be exempted from this liability.

ART. 313. The family council shall be dissolved in the same cases in which the guardianship is extinguished.

TITLE XI.

Emancipation and majority.

CHAPTER FIRST.

Emancipation.

ART. 314. Emancipation takes place:

1. By the marriage of the minor.
2. By majority.
3. By concession of the father or mother exercising the parental authority.

ART. 315. Marriage produces legal emancipation with the limitations mentioned in article 59 and in rule 3 of article 50.

ART. 316. The emancipation, treated of in the third paragraph of article 314, shall be granted by a public instrument or by appearance

before the municipal judge, which shall be recorded in the civil registry, and in the meantime shall have no effect with regard to third persons.

ART. 317. Emancipation qualifies the minor to control his person and property, as if of age; but, until he attains his majority, the person emancipated can not borrow money nor encumber or sell real property without the consent of his or her father, and, in the absence of the latter, that of the mother, and, in the absence of both, without that of a guardian. Neither can he nor she appear in court without the attendance of said persons.

ART. 318. In order that the emancipation may take place by concession of the father or of the mother, it shall be necessary that the minor be 18 years of age and consent thereto.

ART. 319. After the emancipation has been granted it can not be revoked.

CHAPTER SECOND.

Majority.

ART. 320. Majority commences on attaining 23 years of age.

A person of age is qualified for all acts of civil life, with the exceptions established by this code in special cases.

ART. 321. Notwithstanding the provisions of the foregoing article, unmarried daughters of age, but under 25 years, can not leave the parental home without permission of the father or mother in whose company they live, unless to marry or when the father or mother have contracted another marriage.

ART. 322. The orphaned minor may obtain the benefit of majority by concession of the family council with the approval of the presiding judge of the territorial audiencia of the district, after hearing the public prosecutor.

ART. 323. For the concession and approval mentioned in the preceding article it is necessary—

1. That the minor be over eighteen years of age.
2. That he or she consent to the qualification.
3. That it is considered advantageous to the minor.

The qualification shall be recorded in the registry of guardianships and in the civil registry.

ART. 324. The provisions of article 317 shall be applicable to the minor who has obtained the qualification of majority.

TITLE XII.

Registry of civil status.

ART. 325. Acts relating to the civil status of persons shall be recorded in the registry devoted to that purpose.

ART. 326. The registry of civil status shall include the records or

entries of births, marriages, emancipations, acknowledgments and legitimations, deaths, naturalizations, and residences, and shall be in charge of the municipal judges or other officials of the civil order in Spain, and of consular or diplomatic agents in foreign countries.

ART. 327. The records in the registry shall be evidence of the civil status, and any other evidence can be admitted only when such records have never existed or the books of the registry should have disappeared or when a litigation is instituted before the courts.

ART. 328. It shall not be necessary that a newly born child be presented to the official in charge of the registry for the record of birth, the statement of the person obliged to make it being sufficient. This statement shall include all the conditions required by law and shall be signed by its author or by two witnesses, at his request, should he not be able to do so.

ART. 329. In canonical marriages it shall be the obligation of the contracting parties to furnish the official representing the State who attends the ceremony all the data required for its record in the civil registry. Those referring to banns, impediments, and their disposition are excepted and not required to be entered in the registry.

ART. 330. Naturalizations shall have no legal effects whatsoever until they are entered in the registry, whatever may be the evidence proving them and the date on which they have been granted.

Art. 331. Municipal judges and those of first instance, in a proper case, may punish the violations of the provisions relating to the civil registry, when they do not constitute a crime or offense, with a fine of 20 to 100 pesetas.

Art. 332. The law of June 17, 1870, shall continue in force in so far as not modified by the preceding articles.

BOOK SECOND.

PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS.

TITLE I.

Classification of property.

PRELIMINARY PROVISION.

ART. 333. All things which are or may be the subject of appropriation are considered either as personal or real property.

CHAPTER FIRST.

Real property.

ART. 334. Real property consists of—

1. Lands, buildings, roads, and constructions of all kinds adherent to the soil.

2. Trees and plants and ungathered products while they are not separated from the land and form an integral part of the real property.

3. All that is attached to real property in a fixed manner, so that it can not be separated therefrom without breaking the matter or injuring the object.

4. Statues, reliefs, paintings, or other useful or ornamental objects placed in buildings or on lands by the owner of the real estate in such a manner as to show the intention of attaching them permanently to the estate.

5. Machinery, vessels, instruments, or utensils, destined by the owner of the estate to the industry or work he may carry on in a building or estate and which are directly required to satisfy the necessities of the said work.

6. Vivaries for animals, pigeon houses, beehives, fish ponds, or beds for similar purposes, when the owner has placed or preserves them for the purpose of keeping the same attached to the estate and forming a permanent part thereof.

7. Manure destined to the cultivation of an estate, when it is on the ground in which it is to be employed.

8. Mines, quarries, and dumps, while attached to the soil, and running or stagnant waters.

9. Docks and constructions, even though floating, the purpose and conditions of which are to remain at a fixed place in a river, lake, or on a coast.

10. Administrative concessions for public works, and easements, and other property rights in real estate.

CHAPTER SECOND.

Personal property.

ART. 335. Personal property is considered anything susceptib appropriation and not included in the foregoing chapter, and, in eral, all that which can be carried from one place to another witl damage to the real estate to which it may be attached.

ART. 336. Incomes or pensions, either for life or hereditary, in fa of a person or family, provided they do not encumber real estate wi property lien, as well as alienated offices, contracts for public servi and mortgage loan bonds or certificates are also personal property.

ART. 337. Personal property is either consumable (*fungibles*) or n consumable (*no fungibles*).

To the first class belongs that which can not be made use of, by r son of its nature, without consuming it; all other personal prope belongs to the second class.

CHAPTER THIRD.

Property with regard to ownership.

ART. 338. Property is of public or private ownership.

ART. 339. Property of public ownership is—

1. That destined to the public use, such as roads, canals, rivers, t rents, ports, and bridges constructed by the State, and banks, shor roadsteads, and that of a similar character.

2. That belonging exclusively to the State without being for publ use and which is destined to some public service, or to the developme of the national wealth, such as walls, fortresses, and other works f the defense of the territory, and mines, until their concession has bee granted.

ART. 340. All other property belonging to the State which has no the conditions stated in the preceding article is considered as privat property.

ART. 341. Property of public ownership, when no longer devoted t general uses or to the requirements of the defense of the territory, shal become a part of the State property.

ART. 342. Property of the royal patrimony is governed by its specia law, and in what is not provided for therein by the general provision established by this code regarding private property.

ART. 343. The property of provinces and of towns is divided into property for public use and patrimonial property.

ART. 344. Property for public use in provinces and in towns comprises the provincial and town roads, the squares, streets, fountains, and public waters; the promenades, and public works of general service supported by the said towns or provinces.

All other property possessed by either is patrimonial, and shall be governed by the provisions of this code, unless otherwise prescribed in special laws.

ART. 345. Besides the patrimonial property of the State, of provinces, and of municipalities, that belonging to private parties, individually or collectively, is property of private ownership.

PROVISIONS COMMON TO THE THREE PRECEDING CHAPTERS.

ART. 346. Whenever by provision of law or by an individual declaration the expression real property or personal property is used, there shall be understood as included in the same, respectively, that enumerated in chapter first and in chapter second.

Whenever the word furniture (*muebles*) alone is used there shall not be understood as included therein money, credits, commercial securities, bonds, jewels, scientific or artistic collections, books, medals, arms, clothing, horses or carriages and their accessories, grain, liquids (*caldos*), and merchandise or other things, the principal use of which is not to furnish or ornament residences, with the exception of the case in which, by the context of the law or of the individual provision, the contrary clearly appears.

ART. 347. Whenever, in a sale, legacy, or gift or any other provision in which reference is made to personal or real property, its possession or ownership is transferred with everything it may include, there shall not be understood as comprised in the transfer money, bonds, credits, and actions, the titles to which are contained in the thing transferred, unless the intention of including such securities and rights in the transfer is obvious.

TITLE II.

Ownership.

CHAPTER FIRST.

Ownership in general.

ART. 348. Ownership is the right to enjoy and dispose of a thing, without further limitations than those established by law.

The owner has a right of action against the holder and the possessor of the thing to recover the same.

ART. 349. No one shall be deprived of his property, except by competent authority and with sufficient cause of public utility, always after the proper indemnity.

If this requisite has not been fulfilled the judges shall protect, and in a proper case, replace the condemned party in possession.

ART. 350. The owner of land is the owner of its surface and of what is under it, and he may establish thereon the works, plantations, and excavations which he may desire, reserving the easements, and subject to the provisions of the mining and water laws and of the police regulations.

ART. 351. Hidden treasure belongs to the owner of the land on which it is found.

However, when the discovery is made on property belonging to another or to the State, and by chance, one-half thereof shall be awarded the finder.

If the goods discovered are of interest to the sciences or arts, the State may acquire them at their just value, which shall be divided as prescribed.

ART. 352. By "treasure" is understood, for legal purposes, hidden or unknown deposits of money, jewelry, or other precious objects, the legal ownership of which does not appear.

CHAPTER SECOND.

Right of accession.

GENERAL PROVISION.

ART. 353. Ownership of property gives a right by accession to all that is produced thereby or which is united to or incorporated therein naturally or artificially.

SECTION FIRST.—*Right of accession with regard to the production of property.*

ART. 354. The following belong to the owner:

1. Natural fruits.
2. Industrial fruits.
3. Civil fruits.

ART. 355. Natural fruits are the spontaneous products of the soil, and the brood and all other produce of animals.

Industrial fruits are those produced by land of any kind by reason of cultivation or labor.

Civil fruits are rents of buildings, proceeds from leases of lands, and the amount of perpetual life, or other similar incomes.

ART. 356. The receiver of fruits is obliged to pay the expenses incurred by a third party in their production, gathering, and preservation.

ART. 357. Fruits which are in sight or appearing are considered natural or industrial.

With regard to animals, it is sufficient if they are in the womb of the mother, though unborn.

SECTION SECOND.—*Rights of accession with regard to real property.*

ART. 358. Whatever is constructed, planted, or sown on another's property, and the improvements or repairs made thereon, belongs to the owner of the same, subject to the provisions contained in the following articles.

ART. 359. All works, sown grounds, and plantings are presumed to be made by the owner and at his expense, unless the contrary is proven.

ART. 360. The owner of the soil who shall make thereon, in person or through another, plantings, constructions, or works, with material belonging to another person, is obliged to pay their value; and should he have acted in bad faith he shall, furthermore, be obliged to indemnify for loss and damage. The owner of the material shall have a right to remove it only in case he can do so without injury to the work constructed or without destroying the plantings, constructions, and work done.

ART. 361. The owner of the land on which building, sowing, or planting is done in good faith shall have a right to appropriate as his own the work, sowing, or planting after the indemnity mentioned in Arts. 453 and 454, or, to oblige the person who has built or planted, to pay to him the value of the land and to force the person who sowed to pay the proper rent.

ART. 362. He who builds, plants, or sows in bad faith on another's land loses what he has built, planted, or sown, without right to indemnity.

ART. 363. The owner of the land on which anyone has built, planted, or sown in bad faith may demand the demolition of the work or the removal of the planting or sowing and the restoring of everything to its original condition at the expense of the person who built, planted, or sowed.

ART. 364. When there has been bad faith, not only on the part of the person who built, sowed, or planted on another's land, but also on the part of the owner of the latter, the rights of both shall be the same as if they had acted in good faith.

Bad faith on the part of the owner is understood whenever the act has been executed in his presence with his knowledge and tolerance and without objection.

ART. 365. If the material, plants, or seed belong to a third person, who has not acted in bad faith, the owner of the land shall be liable subsidiarily for their value, but only in case the person who used them has no means to pay therefor.

This provision shall not be applicable if the owner makes use of the rights granted him by Art. 363.

ART. 366. The accretions which banks of rivers may gradually receive from the effects of the currents belong to the owners of the estates bordering thereon.

ART. 367. The owners of estates bordering on ponds or lakes do not acquire the land left dry by the natural decrease of waters, nor lose those inundated in extraordinary floods.

ART. 368. When the current of a river, creek, or torrent detaches from an estate fronting thereon a known portion of land and transfers it to another estate, the owner of the estate to which the detached part belongs retains the ownership thereof.

ART. 369. Trees uprooted and carried away by currents of waters

belong to the owner of the land upon which they are carried, if the former owners do not claim them within one month. If the latter claim them, they must pay all the expenses caused by their collection or security in a safe place.

ART. 370. The beds of rivers which remain abandoned because the course of the water has naturally changed belong to the owners of the riparian lands throughout their respective lengths. If the abandoned bed divided estates belonging to different owners, the new dividing line shall run at equal distance therefrom.

ART. 371. Islands which may form in the waters adjacent to the coast of Spain and in navigable rivers belong to the State.

ART. 372. When in a navigable river, which changes its course by natural causes, a new bed is opened through a private estate, this bed shall be of public ownership. The owner of the estate shall recover it if the waters leave it again dry naturally or through works legally authorized for the purpose.

ART. 373. Islands which, through successive deposits in layers of descending alluviums, form themselves in rivers belong to the owners of the banks or shores nearest to each of them, or to those of both shores if the island is in the middle of the river, being then divided longitudinally in halves. If an island thus formed be farther from one bank than from the other, the owner of the nearest bank shall be the sole owner of the same.

ART. 374. When the current of a river runs into branches, leaving an estate or part thereof isolated, the owner of the same retains his ownership. He also retains it if a portion of the land is detached by the current.

SECTION THIRD.—*Right of accession with regard to personal property.*

ART. 375. When two articles of personal property belonging to different persons are united in such manner as to form a single object, without being attended by bad faith, the owner of the principal article shall acquire the accessory one upon indemnifying its former owner for its value.

ART. 376. When two things are incorporated, the principal one shall be considered that to which the other has been united as an ornament or for its use and perfection.

ART. 377. If it be not possible to determine by the preceding rule which of the two incorporated articles is the principal one, that of the greater value shall be considered as such; and between two articles of equal value, that of the greater volume.

In paintings and sculpture, in writings, printed matter, prints, engravings, and lithographs, the board, metal, stone, canvas, paper, or the parchment shall be considered as accessories.

ART. 378. When articles united can be separated without injury, their respective owners may demand that they be separated.

However, when the article united for the use, embellishment, or

perfection of the other is much more precious than the principal one, the owner of the former may demand its separation, even though the article to which it is united may suffer thereby.

ART. 379. When the owner of the accessory thing has united it in bad faith, he shall lose the article incorporated and shall be obliged to indemnify the owner of the principal one for the damages he may have suffered.

When the person who acted in bad faith is the owner of the principal thing, the owner of the accessory one shall have the right to choose between being paid by the former for the value thereof or to have that belonging to him separated, even though it be necessary for such purpose to destroy the principal one, and furthermore, in either case he shall be entitled to indemnity for loss and damage.

If any of the owners has made the incorporation with the knowledge and tolerance and without objection from the other, their respective rights shall be determined in the manner provided for such cases where both acted in good faith.

ART. 380. Whenever the owner of the material used without his consent is entitled to indemnity, he may demand that such indemnity consist in the delivery to him either of material equal in quality and value in all respects to that employed or the price thereof according to an expert appraisement.

ART. 381. If by the will of their owners, two things of identical or different kinds are mixed, or if the mixture occurs accidentally, and if in the latter case can not be separated without injury, each owner shall acquire a right in proportion to the part belonging to him according to the value of the things mixed or confounded.

ART. 382. If by the will of only one of the owners, but in good faith, two things of identical or different kinds are mixed or confounded, the rights of the owners shall be determined by the provisions contained in the preceding article.

If the person making the mixture or confusion acted in bad faith, he shall lose the thing belonging to him mixed or confounded, besides being obliged to indemnify the owner of the thing with which he made the mixture for the losses caused thereby.

ART. 383. The person who, in good faith, made use wholly or partially of material belonging to another party in making a work of a new kind, may make the work his own upon indemnifying the owner of the material for the value thereof.

If the latter is more precious than the work in which it is used, or more valuable, the owner thereof may at his option retain the new thing by paying the price of the work or may claim indemnity for the material.

If in the making of the new work there was bad faith, the owner of the material has a right to retain possession of the work without paying anything to the author, or to claim an indemnity for the value of the material and the losses he may have suffered.

CHAPTER THIRD.

Surveys and demarcations.

ART. 384. Every owner has the right to fix the boundaries of his property by notifying the owners of adjoining estates thereof.

Those having property rights enjoy the same privilege.

ART. 385. The survey shall be made in accordance with the titles of each owner, and, in the absence of sufficient title, from what may appear from the possession held by the contiguous owners.

ART. 386. If the titles do not fix the boundary or area of each owner, and the question can not be decided by the possession or by other means of proof, the demarcation shall be made by dividing the land in dispute in equal parts.

ART. 387. If the titles of the contiguous owners show a larger or smaller area than that comprised in the total of said land the excess or lack shall be divided in proportion.

CHAPTER FOURTH.

Right of inclosing agricultural property.

ART. 388. Every owner may inclose or fence in his estates by means of walls, ditches, growing or dead hedges, or in any other manner whatsoever without injury to the easements existing thereon.

CHAPTER FIFTH.

Unstable buildings and trees about to fall.

ART. 389. If a building, wall, column or any other construction is in danger of falling, the owner shall be obliged to demolish it or to construct such props as may be necessary to prevent its fall.

Should the owner of the unstable work not do so, the authorities may order it demolished at his expense.

ART. 390. When a large tree threatens to fall in such a manner as to cause damage to the estate of another or to travelers on a public or private thoroughfare, the owner of the tree shall be obliged to uproot it and take it away, and should he not do so it shall be done at his expense by order of the authorities.

ART. 391. In the cases of the two foregoing articles, if the tree or building falls, the provisions of articles 1907 and 1908 shall be observed.

TITLE III.

Community of property.

ART. 392. There is community of property when the ownership of a thing or right belongs to different persons undividedly.

In the absence of contracts or of special provisions, ownership in common shall be governed by the provisions of this title.

ART. 393. The share of the participants in the benefits, as well as in the charges, shall be in proportion to their respective interests.

The interests belonging to the coowners shall be presumed equal until the contrary is proven.

ART. 394. Each coowner may use the things owned in common, provided he uses them in accordance with their object and in such manner as not to injure the interests of the community nor prevent the coowners from utilizing them according to their rights.

ART. 395. Every coowner shall have a right to oblige the participants to contribute to the cost of keeping the thing or right held in common. Only the party renouncing his share in the ownership can exempt himself from this obligation.

ART. 396. When the different stories of a house belong to different owners, if the titles of ownership do not specify the manner in which they must contribute to the necessary work, and there is no agreement thereon, the following rules shall be observed:

1. The main and party walls, the roof, and other things used in common shall be in charge of all the coowners in proportion to the value of their stories.

2. Every owner shall pay the cost of maintaining the floor of his story. The expenses connected with the floor of the porch, front door, common yard, and hygienic works, common to all, shall be borne *pro rata* by all the owners.

3. The stairs from the portal to the first story shall be maintained at the expense *pro rata* of all the owners, with the exception of the owner of the ground floor; the stairs leading from the first to the second story shall be maintained at the expense of all, excepting the owners of the ground floor and first story, and so on successively.

ART. 397. None of the joint owners shall, without the consent of the others, make any change in the common property, even though they should be attended with advantageous results for all.

ART. 398. The decision of a majority of the coowners as to the management and better enjoyment of the thing owned in common shall be obligatory.

There shall be no majority, unless the resolution has been adopted by the coowners representing a majority of the interests which constitute the object of the community.

Should there be no majority, or the resolution of the latter is seriously prejudicial to the parties interested in the thing owned in common, the judge, at the instance of a party, shall decree what may be proper, including the appointment of an administrator.

When a part of the thing privately belongs to one or more of the part owners and the other part is owned in common, the foregoing provision shall be applicable to the latter only.

ART. 399. Every coowner shall have full ownership of his part and in the fruits and benefits derived therefrom, and he therefore may alienate,

assign, or mortgage it, and even substitute another person in its enjoyment, unless personal rights are in question. But the effect of the alienation or mortgage, with regard to the coowners, shall be limited to the share which may be awarded him in the division on the dissolution of the community.

ART. 400. No coowner shall be obliged to remain a party to the community. Each of them may ask at any time the division of the thing owned in common.

Nevertheless an agreement to keep the thing undivided for a specified length of time, not exceeding ten years, shall be valid. This period may be extended by a new agreement.

ART. 401. Notwithstanding the provisions contained in the preceding article, the coowners can not demand a division of the thing owned in common to be made when by so doing they may render it unserviceable for the use to which it was destined.

ART. 402. The division of a thing owned in common may be made by the parties in interest or by arbitrators or friendly compromisers, appointed at the will of the coowners.

In case the division is made by arbitrators or compromisers, they shall divide it into parts in proportion to the rights of each coowner, avoiding payments of balances in cash in so far as possible.

ART. 403. The creditors or assignees of the co-owners may concur in the division of the thing owned in common, and object to any division made without their concurrence. But they can not oppose a division already made, except in case of fraud or when it has been made, despite the formal protest made to prevent it, and reserving always the rights of the debtor or assignee to maintain its validity.

ART. 404. If the thing is essentially undividable and the co-owners should not agree that it be awarded to one of them who shall indemnify the others, it shall be sold and the proceeds distributed.

ART. 405. The division of property held in common shall not prejudice a third person, who shall retain the rights of mortgage, easements, or any other property rights which may have belonged to him before the division was made. The personal rights of a third person against the community shall also remain in force, notwithstanding the division.

ART. 406. The rules relating to the division of an estate shall be applicable to the divisions among the co-owners.

TITLE IV.

Some special properties.

CHAPTER FIRST.

Waters.

SECTION FIRST.—*Ownership of waters.*

ART. 407. The following are of public ownership:

1. Rivers and their natural beds.

2. Continuous or intermittent waters from springs or brooks running in their natural beds and the said beds.

3. Waters rising continuously or intermittently in lands of said public ownership.

4. Lakes and ponds formed by nature on public lands and their beds.

5. Rain waters running through ravines or sandy beaches, the beds of which shall also be public property.

6. Subterranean waters on public lands.

7. Waters found within the zone of operation of public works, even when they are made by a concessionnaire.

8. Waters flowing continuously or intermittently on estates belonging to private parties, to the State, to provinces, or to towns from the moment they leave said estates.

9. The overflow of fountains, sewers, and public institutions.

ART. 408. The following are of private ownership:

1. Waters, either continuous or intermittent, rising on private estates as far as they run through them.

2. Lakes and ponds and their beds when formed by nature on said estates.

3. Subterranean waters found on the same.

4. Rain waters falling thereon as long as they remain within their boundaries.

5. The beds of flowing waters, continuous or intermittent, formed by rain water, and those of brooks crossing estates which are not public property.

In every drain or aqueduct the water, the bed, the sloping bank, and the side ways are considered as an integral part of the estate or building to which the waters are destined. The owners of estates through or along the boundaries of which the aqueduct passes can allege no ownership over it, nor any right to make use of its bed or side ways, unless they base their claim on title deeds specifying the right or the ownership claimed.

SECTION SECOND.—*Use of public waters.*

ART. 409. The use of public waters is acquired—

1. By administrative concession.

2. By prescription of twenty years.

The limits of the rights and obligations of these uses shall be those appearing, in the first case, from the terms of the concession; and, in the second, from the manner and form in which the waters have been used.

ART. 410. Every concession of use of waters is understood without prejudice to third parties.

ART. 411. The right to make use of public waters is extinguished by the forfeiture of the concession, and by nonuser for twenty years.

SECTION THIRD.—*Use of waters of private ownership.*

ART. 412. The owner of an estate containing a spring or the source of a brook, continuous or intermittent, may use its waters as far as they run through the estate; but the overflow is public and the use thereof is governed by the special law of waters.

ART. 413. Private ownership of the beds of rain waters does not give a right to make works and constructions which may divert their course to the prejudice of a third party, nor those the destruction of which by the force of floods, may cause such deviation.

ART. 414. No one may enter private property in search of waters or make use of them without permission from their owners.

ART. 415. The ownership which the proprietor of an estate has in the waters rising on the same can not prejudice the rights which the owners of lower estates may have legally acquired to their use.

ART. 416. Every owner of an estate has a right to construct on his property receptacles for rain water, provided he does not prejudice the public or a third party thereby.

SECTION FOURTH.—*Subterranean waters.*

ART. 417. Only the owner of an estate or another person with his permission, may search for subterranean waters thereon.

The search for subterranean water on lands of public ownership can only be made with the permission of an administrative authority.

ART. 418. Artesian waters, according to the special law of waters, belong to the persons who discover the same.

ART. 419. When the owner of artesian waters abandons the same to their natural course, they shall be public property.

SECTION FOURTH.—*General provisions.*

ART. 420. The owner of an estate on which there are defensive works to check waters, or on which, by reason of the variation of their course, it should be necessary to reconstruct them, is bound, at his option, to make the necessary repairs or constructions or to permit that, without injury to him, they be made by the owners of the estates who suffer or are clearly exposed to suffer damage.

ART. 421. The provisions contained in the preceding article are applicable to the cases in which it may be necessary to clear an estate from the material, the accumulation, or fall of which may obstruct the course of waters with injury or danger to a third party.

ART. 422. All the owners who participate in the benefits arising from the works, referred to in the two foregoing articles, are obliged to contribute to the cost of their construction in proportion to their interest. Those who by their own fault may have caused the damage shall be liable for the expenses.

ART. 423. The ownership and use of waters belonging to corporations or private parties are subject to the law of eminent domain.

ART. 424. The provisions of this title shall not prejudice the rights previously acquired nor the private ownership which the owners of waters, drains, fountains, or springs have to use, sell, or exchange them as private property.

ART. 425. In all that is not expressly determined by the provisions of this chapter the special law of waters shall be observed.

CHAPTER SECOND.

Minerals.

ART. 426. Any Spaniard or foreigner may, unrestrictedly, make prospect pits or excavations not exceeding ten meters in length or depth for the purpose of discovering minerals on land of public ownership, but they must previously give notice thereof to the local authorities. On land of private ownership no prospect pits can be sunk without the previous permission of the owner or of the person representing him.

ART. 427. The limits of the right mentioned in the foregoing article, the previous formalities, and the conditions for their exercise, the designation of the substances which are to be considered as minerals, and the determination of the rights of the owner of the land and of the discoverer of the minerals in case of concessions, shall be governed by the special mining law.

CHAPTER THIRD.

Intellectual property.

ART. 428. The author of any literary, scientific, or artistic work has the right to profit by it and dispose of it at will.

ART. 429. The law of intellectual property determines the persons to whom such right belongs, the manner of exercising it, and the period of its duration. In cases not provided for nor decided by said special law, the general rules on ownership established in this code shall be observed.

TITLE V.

Possession.

CHAPTER FIRST.

Possession and its kinds.

ART. 430. Natural possession is the holding of a thing or the enjoyment of a right by a person. Civil possession is the same holding or enjoyment, together with the intention of acquiring ownership of the thing or right.

ART. 431. Possession of things or rights is exercised either by the same person who holds and enjoys them or by another in his name.

ART. 432. Possession of things and rights may be held in one of two different ways—either as an owner, or as a holder of the things or rights to keep or enjoy them, the ownership belonging to another person.

ART. 433. Any person who is not aware that there is in his title or in the manner of acquiring it any flaw invalidating the same shall be considered a possessor in good faith.

Possessors aware thereof are considered possessors in bad faith.

ART. 434. Good faith is always presumed, and any person alleging bad faith on the part of the possessor is obliged to prove it.

ART. 435. Possession acquired in good faith does not lose this character, except in the case and from the moment some act exists proving that the possessor is aware that he possesses the thing illegally.

ART. 436. It is presumed that the possession is still enjoyed in the manner in which it was acquired until the contrary is proven.

ART. 437. Only things and rights capable of being appropriated can be the object of the possession.

CHAPTER SECOND.

Acquisition of possession.

ART. 438. Possession is acquired by the material occupancy of the thing or right possessed, or by the fact that the latter remains subject to the action of our will, or by the proper legal steps and formalities established for acquiring such rights.

ART. 439. Possession may be acquired by the same person who is to enjoy it, by his legal representative, by his agent, or by a third person, without any mandate whatsoever, but in the last case possession shall not be considered as acquired until the person in whose name the instrument of possession has been executed has ratified the same.

ART. 440. The possession of hereditary property is understood as transferred to the heir without interruption and from the instant of the death of the testator, in case the inheritance be accepted.

A person who repudiates an inheritance in a valid manner is understood as not having ever possessed it.

ART. 441. In no case can possession be forcibly acquired while there is a possessor opposing it. A person believing that he has an action or right to deprive another of the holding of a thing must request the assistance of the competent authority whenever the holder refuses the delivery.

ART. 442. A person succeeding by an hereditary title shall not suffer the consequences of a faulty possession of the testator, unless it is proven that he had knowledge of the defects affecting it; but the effects of the possession in good faith shall benefit him only from the date of the death of the testator.

ART. 443. Minors and incapacitated persons may acquire the possession of things; but they shall require the assistance of their legal

representatives to make use of the rights in their favor arising from possession.

ART. 444. Acts which are merely tolerated and those clandestinely executed, without knowledge of the possessor of a thing, or by force, do not affect the possession.

ART. 445. Possession, as a fact, can not be recognized in two different personalities, except in cases where there is no division. Should a question arise as to the fact of the possession, the actual possessor shall be preferred; when there are two, the oldest shall be preferred; if the dates of the possession are the same, the one presenting a title; and if all these conditions are equal, the thing shall be placed in deposit or judicial keeping until the possession or ownership thereof is decided in the proper manner.

CHAPTER THIRD.

Effects of possession.

ART. 446. Every possessor has a right to be respected in his possession; and should he be disturbed therein, he must be protected or possession must be restored to him by the means established in the laws of procedure.

ART. 447. Only the possession acquired and enjoyed by virtue of ownership can serve as a title to acquire it.

ART. 448. The possessor by virtue of ownership has in his favor the legal presumption that he holds possession by reason of a sufficient title and he can not be forced to show it.

ART. 449. The possession of real estate is also a presumption of possession of the furniture and objects contained therein unless it is shown or proven that they should be excluded.

ART. 450. Each one of the participants in a thing possessed in common is considered as having exclusively possessed the part which may be allotted to him on the distribution for the entire period during which there is no division. Interruption in possession of the whole or a part of a thing held in common shall affect all possessors equally.

ART. 451. The fruits collected in good faith by a possessor during the time the possession is not legally interrupted become his own.

Natural and industrial fruits are understood as collected from the moment they are gathered or harvested.

Civil fruits are considered as daily proceeds and belong to the possessor in good faith in this proportion.

ART. 452. If, at the date on which good faith ceases, some natural or industrial fruits are ungathered, the possessor shall have a right to recover the expenses he may have incurred in their production, and furthermore, to a part of the net proceeds of the crop in proportion to the time of his possession.

The expenses shall be distributed pro rata, in the same manner, between the two possessors.

The owner of a thing may, if he desires, grant to the possessor, in good faith, the right to finish the cultivation and collection of the growing fruits as an indemnity for the part of the cost of cultivation and net proceeds belonging to him; the possessor in good faith, who, for any reason whatsoever may not desire to accept this concession, shall lose the right to be indemnified in any other manner.

ART. 453. Necessary expenses are refunded to every possessor, but only the possessor in good faith may retain the thing until they are repaid to him.

Useful expenses are paid the possessor in good faith with the same right of retention, the person who has defeated him in his possession having the option of refunding the amount of the expenses or paying him the increase in value the thing has acquired by reason thereof.

ART. 454. The expenses purely for luxury or mere pleasure are not repaid the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it does not suffer injury thereby and if the successor in the possession does not prefer to refund the amount expended.

ART. 455. A possessor in bad faith shall pay for the fruits collected, and for those which the legitimate possessor could have received, and shall only have a right to be reimbursed for the necessary expenses incurred for the preservation of the thing. The expenses incurred in improvements for luxury and pleasure shall not be repaid the possessor in bad faith; but the latter may remove the object for which such expenses have been incurred, provided the thing suffers no damage and the legitimate possessor does not prefer to retain them, and paying the value they may have at the time of taking possession.

ART. 456. The improvements arising from nature or time always redound to the benefit of the person who has gained the possession.

ART. 457. A possessor in good faith is not liable for the deterioration or loss of the thing possessed, with the exception of the cases in which it is proved that he has acted with fraudulent intent. A possessor in bad faith is liable for the deterioration or loss in any case, even in those caused by force majeure, when he has maliciously delayed the delivery of the thing to its legitimate possessor.

ART. 458. The person obtaining possession is not bound to pay for improvements which have ceased to exist at the time of the acquisition of the thing.

ART. 459. The actual possessor who shows his possession at a prior period is presumed to have had possession also during the intermediate period, until the contrary is proven.

ART. 460. The possessor may lose his possession—

1. By the abandonment of the thing.
2. By transfer to another for a good or valuable consideration.
3. By the destruction or total loss of the thing or by the thing becoming unmarketable.

4. By the possession of another, even against the will of the former possessor, if the new possession has lasted more than one year.

ART. 461. The possession of personal property is not considered lost while it is under the control of the possessor, even though the latter may accidentally not know its whereabouts.

ART. 462. The possession of real property and property rights is not considered lost, nor transferred for the purposes of prescription to the prejudice of a third person, except in accordance with the provisions of the mortgage law.

ART. 463. Instruments relating to possession, either executed or admitted by the person possessing another's thing as a mere holder for its enjoyment or retention for any reason, does not bind nor prejudice the owner, unless the latter should have granted to the former express powers to execute them or unless he ratifies them subsequently.

ART. 464. The possession of personal property, acquired in good faith, is equivalent to a title thereto. However, the person who has lost personal property or has been illegally deprived thereof may recover it from whoever possesses it.

If the possessor of personal property, lost or stolen, has acquired it in good faith at a public sale, the owner can not recover it without reimbursing the price paid therefor.

Neither can the owner of things pledged in pawn shops, established with the authorization of the Government, recover them, whosoever may be the person who pledged them, without previously refunding to the institution the amount of the pledge and the interest due.

With regard to things acquired on exchange, or at fairs or markets or from a merchant legally established and usually employed in similar dealings, the provisions of the code of commerce shall be observed.

ART. 465. Wild animals are only possessed while they are under one's control; domestic or tame ones are considered as tame or domestic if they are accustomed to return to the home of their possessor.

ART. 466. A person who recovers the possession, according to law, which was improperly lost, is considered as having enjoyed it without interruption, for all the purposes which may redound to his benefit.

TITLE VI.

Usufruct, use, and occupancy.

CHAPTER FIRST.

Usufruct.

SECTION FIRST.—*Usufruct in general.*

ART. 467. Usufruct gives a right to enjoy another's property under the obligation of preserving its form and substance unless the instrument creating it or the law otherwise permits.

ART. 468. Usufruct is constituted by law by the wish of private persons expressed in instruments, *inter vivos*, or by last will, and by prescription.

ART. 469. Usufruct can be created on the whole or on part of the fruits of a thing, in favor of one or more persons, simultaneously or successively, and in any case from or to a certain day, conditionally or unconditionally. It may also be created on a right, provided the same is not absolutely personal or not transferable.

ART. 470. The rights and duties of the usufructuaries shall be those fixed in the instrument creating the usufruct; in its absence, or if the latter is not sufficient, the provisions contained in the two following sections shall be observed.

SECTION SECOND.—*Rights of the usufructuary.*

ART. 471. The usufructuary shall be entitled to receive all the natural, industrial, and civil fruits of the property in usufruct. With regard to the treasures which may be found on the estate, he shall be deemed a stranger.

ART. 472. The natural or industrial fruits, growing at the time of the beginning of the usufruct, belong to the usufructuary.

Those growing at the time the usufruct expires, belong to the owner.

In the preceding cases, the usufructuary, at the beginning of the usufruct, is not bound to pay to the owner any of the expenses incurred; but the owner is bound to defray from the proceeds of the growing fruits, at the expiration of the usufruct, the ordinary cost of cultivation, sowing, and other similar expenses incurred by the usufructuary.

The provisions of this article shall not prejudice the rights of a third person, acquired at the beginning or expiration of the usufruct.

ART. 473. If the usufructuary has leased the lands or estates given in usufruct, and the latter should expire before the lease, he or his heirs and successors shall only receive the proportionate part of the rent, to be paid by the lessee.

ART. 474. The civil fruits are understood to be paid day by day, and belong to the usufructuary in proportion to the time the usufruct may last.

ART. 475. When a usufruct is created on the right to collect a rent or a periodical pension, either in money or in fruits, or in interest on obligations, or certificates payable to bearer, each payment due shall be considered as proceeds or fruits of said right.

When it consists in the enjoyment of the benefits arising from an interest in any industrial or commercial enterprise, the distribution of which is not to take place at a definite date, such benefits shall have the same consideration.

In either case, they shall be distributed as civil fruits and shall be applied in the manner prescribed in the foregoing article.

ART. 476. The usufructuary of an estate containing mines is not entitled to the proceeds of those denounced, granted, or which are being

worked at the beginning of the usufruct, unless they are expressly granted to him by the instrument creating the latter or if it be universal.

The usufructuary, however, may remove stones, lime, and chalk from the quarries for repairs, or works which he may be obliged to make or which may be necessary.

ART. 477. Notwithstanding the provisions of the foregoing article, the usufructuary, in a legal usufruct, may work the mines denounced, granted, or which are being worked contained in the estate, retaining one-half of the proceeds which may be obtained after deducting the expenses, which he shall equally share with the owner.

ART. 478. The status of a usufructuary does not deprive the person possessing it of the right granted to everyone by the mining law to denounce and obtain the concession of mines existing on the estate in usufruct in the form and under the conditions established by said law.

ART. 479. The usufructuary shall have a right to enjoy the increase which the thing in usufruct may receive by accretion, as well as the easements existing in its favor, and in general all the benefits inherent thereto.

ART. 480. The usufructuary may personally enjoy the thing in usufruct, lease it to another person, or alienate his right to the usufruct, even for a good consideration; but all the contracts he may make as such usufructuary shall terminate at the expiration of the usufruct, except the lease of rural estates, which shall be considered in force during the agricultural year.

ART. 481. When the usufruct includes things which, without being destroyed, gradually deteriorate by use, the usufructuary shall have a right to make use of them in accordance with the purpose they are to serve, and shall not be obliged to return them at the expiration of the usufruct, except in their condition at that time; but he shall be obliged to indemnify the owner for the deterioration they may have suffered by reason of his fraud or neglect.

ART. 482. When the usufruct includes things which can not be used without being consumed, the usufructuary shall have a right to make use of them under the obligation of paying their appraised value on the expiration of the usufruct, if they were appraised when given to him. When they have not been appraised, he shall have the right to return them by giving the same quantity and quality or paying their current value at the time of the expiration of the usufruct.

ART. 483. The usufructuary of vineyards, olive orchards, or other trees or shrubs may make use of dead trunks and even of those cut or torn off by accident, under the obligation of replacing them by others.

ART. 484. If in consequence of an accident or extraordinary event the vines, olive trees, or other trees or shrubs should have disappeared in such a considerable number that the replanting of them should be impossible, or too onerous, the usufructuary may leave the dead, fallen, or broken trunks at the disposal of the owner and oblige him to remove them and clear the land.

ART. 485. The usufructuary of woodland shall enjoy all the profits which the latter may produce according to its character.

If the woodland is a copse or of timber for building, the usufructuary may do ordinary cutting or felling, such as the owner may have been in the habit of doing, and should the latter not have done so he shall make them in accordance with the usage of the place as to manner, amount, and season.

In any case the cutting or felling of trees shall be done in such manner that it will not injure the preservation of the estate.

In nurseries of trees the usufructuary may thin out as required in order that the remaining trees may properly develop.

With the exception of the provisions contained in the foregoing paragraphs, the usufructuary can not cut trees close to the ground unless it be to restore or improve some of the things held in usufruct, and in such case he must previously inform the owner of the necessity for the work.

ART. 486. The usufructuary of an action to recover an estate or property right, or personal property, has a right to enforce it, and to oblige the owner of the action to give him his representation for this purpose, and to furnish him the proofs he may have. When, by reason of the enforcement of such action, he acquires the thing claimed, the usufruct shall be limited to the fruits only, the ownership going to the proprietor.

ART. 487. The usufructuary may make on the property which is the object of the usufruct any improvements, useful or for recreation, which he may deem proper, provided he does not change its form or substance; but he shall have no right to be indemnified therefor. He may, however, remove said improvements, should it be possible to do so without injury to the property.

ART. 488. The usufructuary may set off any damage to the property with the improvements he may have made thereon.

ART. 489. The owner of property, the usufruct of which is held by another, may alienate it, but can not change its form or substance nor do anything to the prejudice of the usufructuary.

ART. 490. The usufructuary of part of a thing held in common shall exercise all the rights corresponding to the owner thereof with regard to the administration and collection of fruits or interests. Should the community cease by reason of the division of the thing possessed in common, the usufruct of the part awarded to the owner or coowner shall appertain to the usufructuary.

SECTION THIRD.—*Obligations of the usufructuary.*

ART. 491. The usufructuary, before entering upon the enjoyment of the property, is obliged—

1. To make, after summoning the owner or his legitimate representative, an inventory of all the property, having an appraisal of the personal property made, and describing the condition of the real property.

2. To give security, binding himself to comply with the obligations imposed on him by this section.

ART. 492. The provision contained in number 2 of the foregoing article is not applicable to the vendor or donor who has reserved to himself the usufruct of the property sold or bestowed as a gift, nor to parents who are the usufructuaries of the property of their children, nor to the surviving spouse with regard to the hereditary portion granted to him or her by articles 834, 836, and 837, except in case the parents or spouse contract a second marriage.

ART. 493. The usufructuary, whatever the title for his usufruct may be, may be excused from the obligation of making an inventory or of giving security when no one will be injured thereby.

ART. 494. Should the usufructuary not give security in cases in which he should do so, the owner may require that the real property be placed under administration; the personal property sold; that the public securities, instruments of credit, payable to order or to bearer, be converted into certificates or be deposited in a bank or public institution; and that the capital or sums in cash and money received from sales of personal property be invested in safe securities.

Interest on money received from the sale of personal property and that on public securities and bonds, and the proceeds of property placed under administration, belong to the usufructuary.

The owner may furthermore, if he prefers it, while the usufructuary gives no security or is excused from doing so, retain in his possession the property of the usufruct, as administrator, and with the obligation of delivering the net proceeds thereof to the usufructuary, after deducting the sums which may be agreed upon or may be judicially fixed for said administration.

ART. 495. If the usufructuary who has not given security claims, under security given under oath, the delivery of the furniture required for his use, and that a dwelling be assigned to him and his family in a house included in the usufruct, the judge may grant his request, after considering the circumstances of the case.

The same shall be understood with regard to instruments, implements, and other personal property, required for the industry in which he is engaged.

Should the owner not wish that some pieces of furniture be sold, either by reason of their artistic merit or on account of being keepsakes, he may demand their delivery to him upon giving security for the payment of the legal interest on their appraised value.

ART. 496. After the security has been given by the usufructuary he shall be entitled to all the proceeds from the day on which he should have begun to receive them, in accordance with the instrument creating the usufruct.

ART. 497. The usufructuary must take care of the property given in usufruct as a good father of a family would.

ART. 498. A usufructuary who should alienate or lease his right of usufruct shall be liable for the damage suffered by the property in usufruct through the fault or neglect of the person who substitutes him.

ART. 499. If the usufruct should be created on a flock, or on a herd of cattle, the usufructuary shall be obliged to replace with the young thereof those dying annually or naturally and those carried away by the rapacity of preying animals.

If the cattle on which the usufruct is created should all perish, without fault of the usufructuary, by reason of a contagious disease or any other uncommon event, the usufructuary shall fulfill his duty by delivering to the owner those remaining which may have been saved from this misfortune.

Should the herd partially perish, also by reason of accident and without the fault of the usufructuary, the usufruct shall continue with regard to the part saved.

Should the usufruct be on sterile stock, it shall be considered for all its purposes as created on consumable objects.

ART. 500. The usufructuary is obliged to make the ordinary repairs required by the things given in usufruct.

Ordinary repairs shall be considered those required by the ordinary wear and tear produced by the natural use of things, and which are indispensable for their preservation. Should he not make them after being requested to do so by the owner, the latter may make them at the expense of the usufructuary.

ART. 501. Extraordinary repairs shall be made for the account of the owner. The usufructuary is obliged to notify him when the necessity of making them is urgent.

ART. 502. If the owner should make the extraordinary repairs he shall be entitled to demand of the usufructuary the legal interest on the amount invested in them during the continuance of the usufruct.

Should he not make them when they are indispensable for the preservation of the thing, the usufructuary may make said repairs; but he shall have a right to demand of the owner, on the expiration of the usufruct, the increase in value which the estate may have acquired by reason of said works.

Should the owner refuse to pay said amount the usufructuary shall have the right to retain the thing until he reimburses himself with the proceeds thereof.

ART. 503. The owner may make the works and improvements which may be proper on the estate in usufruct, or new plantations thereon if it is rural property, provided the value of the usufruct is not reduced nor the rights of the usufructuary prejudiced by such acts.

ART. 504. The payment of the annual charges and taxes and of those considered liens on the fruits shall be made by the usufructuary during the continuation of the usufruct.

ART. 505. The taxes which may be imposed directly upon the capital, during the usufruct, shall be paid by the owner.

If the latter should have paid them the usufructuary must pay him the proper interest on the sums he may have disbursed by reason thereof, and if the usufructuary should advance the amounts of such taxes he shall recover them on the expiration of the usufruct.

ART. 506. If the usufruct should be created on the entire patrimony, and if, at the time of its creation, the owner has debts, the provisions of articles 642 and 643 relating to gifts shall be applied for the maintenance of the usufruct as well as for the obligation of the usufructuary to pay them.

The same provision is applicable in case the owner, at the time of the creation of the usufruct, should be obliged to pay periodical sums even though there be no known principal.

ART. 507. The usufructuary may claim the credits due which form part of the usufruct if he has given or gives the proper security. If he has been excused from giving security, or if he can not do so, or if that given is not sufficient, he shall require the authorization of the owner, or, in his absence, of the judge to collect said credits.

The usufructuary who has given security may invest the sum he collects in any manner he may deem fit. The usufructuary without bond must invest said capital at interest, upon agreement with the owner, and in the absence of such an agreement, with judicial authorization, and in every case with security sufficient to preserve the integrity of the capital in usufruct.

ART. 508. The universal usufructuary must pay in full the legacy of a life annuity or the pension for support.

The usufructuary of an aliquot part of the estate shall pay in proportion to his share.

In neither of the two cases shall the owner be obliged to make any reimbursements.

The usufructuary of one or more specified things shall pay the legacy only when the annuity or pension is expressly charged upon them.

ART. 509. The usufructuary of a mortgaged estate shall not be obliged to pay the debt for the security of which the mortgage was created.

When the estate is attached or judicially sold for the payment of the debt, the owner shall be liable to the usufructuary for what he may lose by reason thereof.

ART. 510. Should the usufruct be of the whole or of an aliquot part of an inheritance, the usufructuary may advance the sums which may correspond to the property in usufruct for the payment of the debts of the estate and shall be entitled to demand their return from the owner, without interest, at the expiration of the usufruct.

Should the usufructuary refuse to make this advance, the owner may request the sale of the part of the property in usufruct which may be necessary to pay said sums, or pay them with his own money, being entitled in such case to demand the proper interest of the usufructuary.

ART. 511. The usufructuary is obliged to notify the owner of any act of a third person, of which he may have knowledge, which might injure

the rights of ownership, and shall be liable, should he not do so, for the losses and damages as if they were caused by his own fault.

ART. 512. The expenses, costs, and judgments of the litigation instituted, with regard to the usufruct, shall be charged to the usufructuary.

SECTION FOURTH.— *Ways of extinguishing a usufruct.*

ART. 513. A usufruct is extinguished:

1. By the death of the usufructuary.
2. By the expiration of the period for which it was created or by the fulfillment of the condition subsequent mentioned in the instrument creating it.
3. By the merger of usufruct and ownership in the same person.
4. By the renunciation of the usufructuary.
5. By the total loss of the property in usufruct.
6. By the termination of the right of the person constituting it.
7. By prescription.

ART. 514. If the thing given in usufruct should suffer a partial loss only, this right shall continue with regard to the remainder.

ART. 515. The usufruct can not be created for more than thirty years in favor of a town, corporation, or association. Should it have been created, and before said period the town becomes deserted or the corporation or association is dissolved, the usufruct shall be extinguished by this fact.

ART. 516. The usufruct granted for the time until a third person attains a certain age shall continue during the number of years specified, even though the third person dies before, unless said usufruct has been expressly granted only because of the existence of the said person.

ART. 517. If the usufruct is created on an estate of which a building forms part, and the latter should be destroyed in any manner whatsoever, the usufructuary shall be entitled to enjoy the use of the land and material.

This shall also be the case if the usufruct is created upon the building only, and should the latter be destroyed. But, in such case, if the owner desires to construct another building he shall have a right to occupy the ground and to make use of the materials, being obliged to pay the usufructuary during the continuance of the usufruct the interest upon the sums equivalent to the value of the ground and of the materials.

ART. 518. If the owner shares with the usufructuary the insurance of the estate given in usufruct, he shall continue, in case of accident, in the enjoyment of the new building, should one be constructed, or shall receive the interest on the amount of the insurance if the owner does not wish to rebuild.

If the owner should have refused to contribute to the insurance of the estate, and the usufructuary does so alone, the latter shall acquire the

right, in case of accident, to collect in full the amount of the insurance, but with the obligation of investing it in rebuilding the estate.

If the usufructuary should have refused to contribute to the insurance and the owner does so alone, the latter shall receive, in case of accident, the full amount of the insurance, always reserving the right granted the usufructuary in the foregoing article.

ART. 519. If the thing in usufruct should be condemned by way of eminent domain, the owner shall be obliged either to replace it with another of the same value, and having similar conditions, or to pay the usufructuary the legal interest on the amount of the indemnity during the continuance of the usufruct. If the owner chooses the latter, he is obliged to give security for the payment of the interest.

ART. 520. A usufruct is not extinguished by the bad use of the thing in usufruct; but if the abuse causes considerable loss to the owner, the latter may request that the thing be delivered to him, binding himself to pay annually to the usufructuary the net proceeds of the same, after deducting the expenses and the compensation which may be allowed him for its administration.

ART. 521. The usufruct created in favor of several persons living at the time of its creation shall not be extinguished until the death of the last survivor.

ART. 522. Upon the expiration of the usufruct the thing in usufruct shall be delivered to the owner, reserving the right of retention appertaining to the usufructuary or his heirs, for disbursements, which should be repaid. After the delivery is made the bond or the mortgage shall be canceled.

CHAPTER SECOND.

Use and occupancy.

ART. 523. The rights and obligations of a person having the use and of the one who has a right of occupancy shall be governed by the instruments creating such rights, and in their absence by the following provisions.

ART. 524. Use gives a right to receive, out of the fruits of another's property, whatever may be required to provide for the necessities of the person enjoying the use, and of his family, even when the latter increases.

Occupancy gives the person having this right that of occupying in another's house the apartments he may require for himself and for the members of his family.

ART. 525. The rights of use and occupancy can not be leased, nor transferred to another person in any manner.

ART. 526. The person having the use of a flock or of a herd of cattle may make use of the young, milk, and wool thereof, in so far as may be required for the consumption of himself and family, as well as of the dung required for manuring the land he may cultivate.

ART. 527. If the person enjoying the use consumes all the fruits of another's property, or if the person having the right of occupancy should occupy the whole house, he shall be obliged to pay all the expenses of cultivation, ordinary repairs for the preservation thereof, as well as the taxes, in the same manner as the usufructuary.

If he receives a part of the fruits only, or dwells in a part of the house, he need make no payments, provided that a part of the fruits or benefits sufficient to cover the expenses and taxes remain to the owner. Should they not be sufficient, the former shall pay what may be required.

ART. 528. The provisions established for usufructs are applicable to the rights of use and occupancy, in so far as they do not conflict with those contained in this chapter.

ART. 529. The rights of use and occupancy are extinguished by the same causes as that of usufruct, and, furthermore, by serious abuse of the thing or dwelling.

TITLE VII.

Easements.

CHAPTER FIRST.

Easements in general.

SECTION FIRST.—*Different kinds of easements which may be established on estates.*

ART. 530. An easement is a charge imposed upon real property for the benefit of another estate belonging to a different owner.

The real property in favor of which the easement is established is called the dominant estate, and the one charged with it the servient estate.

ART. 531. Easements may also be established for the benefit of one or more persons or of a community to whom the incumbered estate does not belong.

ART. 532. Easements may be continuous, intermittent, apparent or nonapparent.

Continuous easements are those the use of which is or may be incessant without the intervention of any act of man.

Intermittent easements are those used at more or less long intervals and which depend upon acts of men.

Apparent easements are those which are well known and which are continually in view by external signs, which show the use and benefit of the same.

Non apparent easements are those which show no external sign of their existence.

ART. 533. Easements are, furthermore, positive or negative.

A positive easement is called one which imposes upon the owner of the servient estate the obligation of allowing something to be done or

doing it himself, and a negative easement that which forbids the owner of the servient estate to do something which he could properly do if the easement did not exist.

ART. 534. Easements are inseparable from the estate to which they actively or passively belong.

ART. 535. Easements can not be divided. When the servient estate is divided among two or more persons the easement is not modified, and each division has to bear the part corresponding to it.

If the dominant estate is divided among two or more persons each part owner may use the easement wholly, provided the place of its use is not changed, nor increasing the easement in any manner whatsoever.

ART. 536. Easements are established either by law or by the will of the owners. The former are called legal and the latter voluntary.

SECTION SECOND.—*Manner of acquiring easements.*

ART. 537. Continuous and apparent easements are acquired either by virtue of title or by prescription of twenty years.

ART. 538. In order to acquire by prescription the easements referred to in the foregoing article, the time of the possession shall be counted, in positive easements, from the day on which the owner of the dominant estate or the one who has made use of the easement has commenced to exercise the right on the servient estate; and in negative easements, from the day on which the owner of the dominant estate has, by a formal act, forbidden the owner of the servient one to execute the act which would be legal without the easement.

ART. 539. Continuous nonapparent easements and intermittent ones, either apparent or not, can only be acquired by virtue of a title.

ART. 540. The lack of title establishing an easement which can not be acquired by prescription can only be substituted by the instrument of acknowledgment by the owner of the servient estate or by a final judgment.

ART. 541. The existence of an apparent sign of an easement between two estates established by the owner of both shall be considered, should one of them be alienated, as a title, in order that the easement may continue actively and passively, unless, at the time of the division of the ownership of both estates, the contrary should be expressed in the instrument of alienation of either of them, or if said sign is removed before the execution of the instrument.

ART. 542. In establishing an easement, all the rights necessary for its use are understood to be granted.

SECTION THIRD.—*Rights and obligations of owners of dominant and servient estates.*

ART. 543. The owner of the dominant estate may make, at his own expense, on the servient estate the works necessary for the use and preservation of the easement, but without changing it or rendering it more onerous.

He must select therefor the most convenient time and manner in order to cause the least possible inconvenience to the owner of the servient estate.

ART. 544. Should there be several dominant estates, the owners of all of them shall be obliged to contribute to the expenses referred to in the foregoing article, in proportion to the benefit each may obtain from the work. The one who does not wish to contribute may exempt himself by renouncing the easement for the benefit of the others.

If the owner of the servient estate should, in any manner whatsoever, make use of the easement, he shall be obliged to contribute to the expenses in the proportion above stated, unless there is an agreement to the contrary.

ART. 545. The owner of the servient estate can not impair, in any manner whatsoever, the use of an established easement.

However, if by reason of the place originally assigned or of the manner established for the use of the easement, the latter should become too inconvenient to the owner of the servient estate or should prevent him from making works, repairs, or important improvements, it may be changed at his expense, provided he offers another place or manner equally convenient, and that no injury is caused the owner of the dominant estate or those who have a right to the use of the easement.

SECTION FOURTH.—*Ways of extinguishing easements.*

ART. 546. Easements are extinguished:

1. By merger in the same person of the ownership of the servient and dominant estates.

2. By nonuser for twenty years.

This period shall commence to be counted, in intermittent easements, from the day on which it has ceased to be used; and, with regard to continuous ones, from the day on which an act in contravention of the easement may have occurred.

3. When the estates become in such condition that the easement can not be made use of; but it shall revive, if subsequently the condition of the estates permits it to be used, unless, when the use becomes possible, sufficient time has elapsed for the prescription, in accordance with the provisions of the foregoing number.

4. When the day falls due, or when the condition is fulfilled, if the easement be temporary or conditional.

5. By the renunciation of the owner of the dominant estate.

6. By the redemption agreed upon between the owners of the dominant and servient estates.

ART. 547. The manner of permitting the enjoyment of the easement shall be prescribed like the easement itself, and in the same way.

ART. 548. If the dominant estate belongs to several persons in common, the use of the easement made by one of them prevents the prescription with regard to the others.

CHAPTER SECOND.

Legal easements.

SECTION FIRST.—*General provisions.*

ART. 549. The purpose of easements, imposed by law, is either public utility or the interest of private persons.

ART. 550. All that concerns easements, established for the public or common utility, shall be governed by the special laws and regulations pertaining thereto, and, in their absence, by the provisions of this title.

ART. 551. The easements, established by law for the interests of private persons or for causes of private utility, shall be governed by the provisions of this title, without prejudice to the provisions of general or local laws, regulations, and ordinances with regard to city or rural police.

These easements may be modified by agreement among the persons interested, if the law does not prohibit, and if it does not prejudice a third person.

SECTION SECOND.—*Easements with regard to waters.*

ART. 552. Lower estates must receive the waters which naturally and without the intervention of man descend from the higher estates, as well as the stone or earth which they carry with them.

Neither may the owner of the lower estate construct works preventing this easement, nor the one of the higher estate works increasing the burden.

ART. 553. The banks of the rivers, even when they are of private ownership, are subject in their entire length and in their margins for a zone of three meters to the easement of the public use in the general interest of navigation, floatage, fishing, and salvage.

The estates adjoining the banks of navigable or floatable rivers are furthermore subject to the easement of a towpath for the exclusive service of river navigation and floatage.

Should it be necessary to occupy, for such purpose, lands of private ownership, the proper indemnity must first be paid.

ART. 554. If for the diversion or taking of waters from a river or brook or for the use of other continuous or intermittent streams it should be necessary to construct a dam, and the person who is to do so is not the owner of the banks or land upon which to support it, he may establish the easement for abutment of the dam by previously paying proper indemnity.

ART. 555. Obligatory easements for drawing water and for watering animals may be imposed only for a cause of public utility in favor of a town or village after the proper indemnity.

ART. 556. The easements for drawing water and for watering animals carry with them the obligation on the servient estates of giving

the right of way to the persons and animals to the point where it can be utilized, and the indemnity must include this service.

ART. 557. Whosoever wishes to make use of water, of which he may dispose for an estate belonging to him, has the right to cause it to pass through the intermediate estates, with the obligation of indemnifying their owners, as well as those of the lower estates upon which the waters may filter or descend.

ART. 558. A person desiring to make use of the right granted in the foregoing article is obliged:

1. To prove that he has a right to dispose of the water, and that it is sufficient for the use to which it is destined.

2. To show that the right of way he requests is the most convenient and least onerous to a third person.

3. To indemnify the owner of the servient estate in the manner prescribed by the laws and regulations.

ART. 559. The easement of an aqueduct for an object of private interest can not be imposed on buildings nor their yards or dependencies, nor on gardens or orchards already in existence.

ART. 560. The easement of an aqueduct does not prevent the owner of the servient estate from closing and fencing it, nor from building over the aqueduct, in such manner that the latter suffers no damage nor renders impossible necessary repairs and cleanings.

ART. 561. The easement of an aqueduct for its legal effects shall be considered as continuous and apparent, even though the passage of the water is not continuous, or even if its use depends on the requirements of the dominant estate, or periods consisting of days or hours.

ART. 562. A person who for the purpose of irrigating his estate or improving it has to construct a stop lock or a sluice gate in a mill race through which it is to receive water, may demand that the owners of the margins allow their construction, after paying all loss and damage, including those caused by the new easement to the said owners and to the other irrigators.

ART. 563. The establishment, extent, form, and conditions of the easements of waters to which this section refers shall be governed by the special law relating thereto in everything not provided for in this code.

SECTION THIRD.—*Right of way.*

ART. 564. The owner of an estate or of property surrounded by others, belonging to several owners, and having no exit to public roads, has a right to demand a right of way through the neighboring estates on paying the proper indemnity.

If this easement is constituted in such manner that its use may be continuous for all the requirements of the dominant estate, establishing a permanent passage, the indemnity shall include the value of the land occupied and the amount of the damage caused the servient estate.

When it is limited to the passage required for the cultivation of the estate surrounded by others, and for the transportation of its crops through the servient estate without a permanent passage, the indemnity shall consist in the payment of the damage caused by said encumbrance.

ART. 565. The right of way must be at the point least prejudicial to the servient estate, and in so far as is consistent with this rule where the distance from the dominant estate to the public road may be the shortest.

ART. 566. The width of the right of way shall be sufficient for the necessities of the dominant estate.

ART. 567. When an estate, acquired by sale, exchange, or division should be surrounded by other estates of the vendor, exchanger, or coowner, the latter shall be obliged to grant right of way without indemnity, unless there is an agreement to the contrary.

ART. 568. If the right of way granted to an inclosed estate ceases to be necessary because the owner thereof has joined it to another abutting on the public road, the owner of the servient estate may demand the extinguishment of the easement, returning what he may have received by way of indemnity.

The same shall be understood in case a new road is opened giving access to the inclosed estate.

ART. 569. If it is indispensable for the construction or repair of a building to carry the materials through another's estate, or construct thereon scaffolding or other objects for the work, the owner of said estate is obliged to consent thereto, receiving an indemnity corresponding to the damage caused him.

ART. 570. Existing rights of way for the passage of stock, known by the name of sheep path, trail, footpath, or by any other, and those for watering and resting places and sheepfolds shall be governed by the ordinances and regulations relating thereto, and, in their absence, by the uses and customs of the locality.

Without prejudice to rights legally acquired, a path shall not exceed 75 meters in width; a trail, 37 meters 50 centimeters, and a footpath, 20 meters.

When it may be necessary to establish an obligatory right of way or for a drinking trough for cattle, the provisions of this section and of articles 555 and 556 shall be observed. In this case the width can not exceed 10 meters.

SECTION FOURTH.—*Easements of party walls and fences.*

ART. 571. The easements of party walls and fences shall be governed by the provisions of this title, and by the local ordinances and customs in so far as they do not conflict with the same or if there are no provisions in regard thereto.

ART. 572. The easement of party walls and fences is presumed, unless there is a title or exterior mark or proof to the contrary:

1. In dividing walls of adjoining buildings up to the point of elevation in common.

2. In dividing walls of gardens or yards situated in cities or in the country.

3. In fences, inclosures, and live hedges dividing rural estates.

ART. 573. It is understood that there are exterior signs, in contravention of the easement of party wall and fences:

1. When in dividing walls of buildings there are windows or openings.

2. When the dividing wall is, on one side, true and plumb in all its facement, and has similar conditions in the upper part of the other side, but in the lower part thereof slants or projects.

3. When the entire wall is built on the land of one of the estates, and not on the dividing line of the two contiguous estates.

4. When it bears the burden of the binding beams, floors, and roof frame of one of the houses and not of the adjoining one.

5. When the dividing walls between yards, gardens, and estates are so constructed that the coping sheds the waters toward one of the estates.

6. When the dividing wall being constructed of stone and cement, has stones called stepping stones, which at intervals project from the sus-face on one side only and not on the other.

7. When rural estates adjoining others inclosed by fences or live hedges are themselves not closed.

In all these cases the ownership of the walls, inclosures, or hedges shall be understood as vested exclusively in the owner of the property or estate who has in his favor the presumption based on any one of the said signs.

ART. 574. Open ditches or drains between estates are also considered as common if there is no title or sign proving the contrary.

There is a sign contrary to ownership in common when the earth or dirt removed to open or clean the ditch has been done only on one side thereof, in which case the ownership of the ditch shall be vested exclusively in the owner of the estate having this exterior sign on its side.

ART. 575. The cost of repairs and construction of party walls and the preservation of inclosures, live hedges, ditches, and drains in common shall be borne by all the owners of the estates who are interested therein, in proportion to the right of each one.

Nevertheless, any owner may refuse to contribute to this charge by renouncing his right, except in case the party wall supports a building belonging to him.

ART. 576. If the owner of a building supported by a party wall desires to demolish it, he may also renounce the part ownership; but all the repairs and works necessary to prevent damages which the demolition may cause to the party wall, on this occasion only, shall be paid for by him.

ART. 577. Every owner may construct a party-wall by erecting it, at his own expense, and by paying for any damages which may be caused by the work, even when only temporary.

He shall also have to pay for the expenses of maintaining the wall in the part newly raised or deepened at its foundation, with regard to its former condition, and besides the indemnity for the increased expenses which it may be necessary to incur in order to preserve the party-wall by reason of the greater height or depth which has been given the same.

If the party-wall can not bear the increased height, the owner desiring to raise it, shall be obliged to reconstruct it at his own expense, and, should it be necessary therefor to make it thicker, he shall give the space required from his own land.

ART. 578. The other owners, who have not contributed in giving increased height, depth, or thickness to the wall, may, nevertheless, acquire therein the right of part ownership by paying the value of the work and one-half that of the land appropriated for its increased thickness in proportion to their interest.

ART. 579. Every owner of a party-wall may use it in proportion to the right he may have in the part ownership. He may therefore build, supporting his structure on the party-wall, or introduce joists up to one-half its thickness, but without interfering with the common and respective uses of the other part-owners.

In order that the part-owner may make use of this right, he must previously obtain the consent of the other parties interested in the part-ownership; and, should he not obtain it, the conditions necessary in order that the new work may not injure the right of the former shall be fixed by experts.

SECTION FIFTH.—*Easement of light and view.*

ART. 580. No part-owner may, without the consent of the other, make in the party-wall any window or opening whatsoever.

ART. 581. The owner of a wall which is not a party-wall, adjoining another's estate, may make in it windows or openings to admit light, at the height of the ceiling joists or immediately under the ceiling, of the dimensions of 30 centimeters square, and, in any case, with an iron grate embedded in the wall and a wire screen.

However, the owner of the house or estate adjoining the wall in which the openings are made may close them, if he acquires the part ownership of the wall and should there be no agreement to the contrary.

He may also obstruct them by building on his land or raising a wall adjacent to that having such opening or window.

ART. 582. Windows with direct views, or balconies or any similar openings projecting over the estate of the neighbor, can not be made if there is not a distance of, at least, 2 meters between the wall in which they are built and said estate.

Neither can side nor oblique views be opened over said property, unless there is a distance of 60 centimeters.

ART. 583. The distances referred to in the foregoing article shall be measured, in cases of direct views, from the outer line of the wall when the openings do not project, from the line of the latter when they exist, and for oblique views from the dividing line of both estates.

ART. 584. The provisions of article 582 are not applicable to buildings separated by a public thoroughfare.

ART. 585. When, under any title, a right has been acquired to have direct views, balconies, or lookouts overlooking adjacent property, the owner of the servient estate can not build thereon at less than 3 meters distance, to be measured according to the manner mentioned in article 583.

SECTION SIXTH.—*Drainage of buildings.*

ART. 586. The owner of a building is obliged to construct his roofs or coverings in such a manner that rain water may fall on his own land or on the street or public place, and not on the land of his neighbor. Even if it falls on his own land, the owner is obliged to collect it in such manner that it will not injure the adjoining estate.

ART. 587. The owner of the estate charged with an easement of receiving water discharged from roofs may build in such manner as to receive the waters upon his own roof, or give them another outlet, in accordance with the local ordinances or customs, and so as not to be burdensome or detrimental to the dominant estate in any manner whatsoever.

ART. 588. When the yard or court of a house is inclosed between others, and it should not be possible to give an outlet through the house itself to the rain water collected therein, the establishment of an easement of drain may be demanded, giving an outlet to the waters at the point of the contiguous estates where its egress may be the easiest, and establishing a conduit for the drain in such manner as to cause the least damage to the servient estate, after the proper indemnity.

SECTION SEVENTH.—*Intermediate distances and works for certain constructions and plantings.*

ART. 589. Buildings can not be constructed nor plantings made near fortified places or fortresses without submitting to the conditions required by the special laws, ordinances, and regulations relating thereto.

ART. 590. No one shall construct near a wall belonging to another, or near a party wall, wells, sewers, aqueducts, kilns, forges, chimneys, stables, or make deposits of corrosive material, or build manufactories operated by steam, or factories which by reason of their character or products are dangerous or noxious, without observing the distances prescribed by the regulations and customs of the locality and without

making the necessary protective works, subject in regard to form to the conditions prescribed by said regulations.

In the absence of regulations the precautions which may be considered necessary shall be taken, after an expert opinion, in order to avoid any damage to the neighboring estates or buildings.

ART. 591. Trees shall not be planted near another's estate, except at the distance authorized by the ordinances or customs of the locality, and in their absence at a distance of 2 meters from the dividing line of the estates, if the planting is made of tall trees, and at 50 centimeters if the planting is of shrubs or small trees.

Every owner has a right to demand that trees which may be planted in the future at a lesser distance from his estate be uprooted.

ART. 592. Should the branches of any tree extend over a neighboring estate, gardens, or yards, the owner of the latter shall have a right to demand that they be cut in so far as they extend over his property; and should the roots of the neighboring trees extend into another's land the owner of said land may himself cut them within his estate.

ART. 593. Trees existing in a party live hedge shall also be considered as party trees, and any of the owners has a right to demand their uprooting.

Trees serving as boundary marks are excepted, which may only be uprooted by common consent of the owners of the adjoining estates.

CHAPTER THIRD.

Voluntary easements.

ART. 594. Every owner of an estate has a right to charge it with all the easements he may deem fit, and in the manner and form that he may consider best, provided he does not violate the laws nor public order.

ART. 595. The owner of an estate the usufruct of which belongs to another may impose thereon, without the consent of the usufructuary, any easements not injuring the right of usufruct.

ART. 596. When one person has the legal title in an estate and another has the beneficial title, no perpetual voluntary easement can be established thereon without the consent of both parties in interest.

ART. 597. In order to impose an easement on an undivided estate, the consent of all the part owners shall be required.

The consent given by some only shall remain in suspension until every one of the joint or co-owners agrees thereto.

But the consent given by one of the part owners severally shall bind the grantor or his successors, even if they be so by private title, not to prevent the exercise of the right granted.

ART. 598. The title, and in a proper case the possession, of an easement acquired by prescription determines the rights of the dominant estate and the obligation of the servient estate. In its absence the easement shall be governed by such provisions of this title which may be applicable.

ART. 599. If the owner of the servient estate has bound himself at the time of creating the easement to defray the cost of the works required for the use and preservation thereof he may free himself from this charge by abandoning his estate to the owner of the dominant estate.

ART. 600. Pasturage in common may only be established in the future by an express consent of the owners, contained in a contract or last will, and not in favor of a universality of persons or a universality of property, but in favor of specified individuals and on estates also definite and specified.

An easement established in accordance with this article shall be governed by the instrument of its creation.

ART. 601. Pasturage in common in public lands, whether belonging to the municipalities or to the State, shall be governed by the administrative laws.

ART. 602. If pasturage in common exists between residents of one or more towns, the owner who incloses an estate with a fence or hedge shall free the same from the pasturage in common. The other easements, nevertheless, established on the same shall continue.

The owner who incloses his estate shall preserve his right to the pasturage in common in the other estates which are not inclosed.

ART. 603. The owner of land encumbered by the easement of pasturage may redeem it by paying the value thereof to those having the right thereto.

In the absence of an agreement, the amount of said redemption shall be fixed upon the basis of 4 per cent of the annual value of the pasturage, fixed by an expert appraisal.

ART. 604. The provisions contained in the preceding article are applicable to easements established for the use of firewood and other products of forests which are private property.

TITLE VIII.

The registry of property.

FIRST AND LAST CHAPTER.

ART. 605. The purpose of the registry of property is to enter or record therein the instruments and contracts relating to ownership and other property rights in real property.

ART. 606. The titles of ownership or of other property rights relating to real estate which are not properly recorded or entered in the registry of property shall not prejudice third persons.

ART. 607. The registry of property shall be public for those who have a known interest in ascertaining the condition of real property or property rights recorded or entered therein.

ART. 608. The provisions of the mortgage law shall be observed with regard to the determination of instruments subject to record or entry, the form, effect, and extinction of the same, the manner of keeping the registry, and value of the entries contained in the books of the same.

BOOK THIRD.

DIFFERENT WAYS OF ACQUIRING OWNERSHIP.

Preliminarg provision.

ART. 609. Ownership is acquired by retention.

Ownership and other property rights are acquired and transmitted by law, by gift, by testate or intestate succession, and, in consequence of certain contracts, by tradition.

TITLE I.

Retention.

ART. 610. Things are acquired by retention which can be appropriated by reason of their nature, which have no owners, such as animals which are the object of hunting and fishing, hidden treasure, and abandoned property.

ART. 611. The right to hunt and fish is governed by special laws.

ART. 612. The owner of a swarm of bees shall have a right to pursue them on another's estate, indemnifying the possessor of the latter for the damage caused. Should it be inclosed, he shall require the consent of the owner to enter the same.

Should the owner not have pursued, or should he abandon the pursuit of the swarm for two consecutive days, the possessor of the estate may take or retain it.

The owner of tamed animals may also claim them within twenty days, counted from the date of their retention by another. After this period has elapsed, they shall belong to the person who may have caught and kept them.

ART. 613. Pigeons, rabbits, and fish, which, from their respective breeding places, should pass to another one, belonging to a different owner, shall be the property of the latter, provided they have not been enticed by means of some trickery or fraud.

ART. 614. A person finding a treasure by chance, hidden on another's property, shall have the right granted him by article 351 of this code.

ART. 615. A person finding any personal property, which is not treasure, must return it to its former possessor. Should the latter be unknown, he must deliver it immediately to the mayor of the town where the find was made.

The mayor shall publish it in the usual manner two consecutive Sundays.

Should it not be possible to keep the personal property found without injury or without incurring expenses greatly reducing its value, it shall be sold at public auction, after eight days have elapsed from the second advertisement, without the owner having apppeared, and the proceeds shall be deposited.

After two years have elapsed from the date of the second advertisement, without the owner having appeared, the thing found or its value shall be awarded to the person who found it.

The latter, or the owner in a proper case, shall be obliged to pay the costs.

ART. 616. Should the owner appear, in due time, he shall be obliged to pay, as a reward to the finder of the thing, a tenth part of the sum or of the value of the article found. If the value of the find exceeds 2,000 pesetas, the reward shall be reduced to a twentieth with regard to the excess.

ART. 617. The rights to goods jettisoned, or to those cast ashore by the waves, whatever their nature may be, or to plants and herbs growing on the seashore, are fixed by special laws.

TITLE II.

Gifts.

CHAPTER FIRST.

Nature of gifts.

ART. 618. A gift is an act of liberality by which a person disposes gratuitously of a thing in favor of another, who accepts it.

ART. 619. A gift is also what is given a person by reason of his merits or for services rendered the donor, provided it does not constitute a recoverable debt, or that which imposes upon the donee a burden inferior to the value of the gift.

ART. 620. Gifts which are to become effective upon the death of the donor partake of the nature of provisions by last will and shall be governed by the laws established for testamentary succession.

ART. 621. Gifts which are to produce their effects *inter vivos* shall be governed by the general provisions of contracts and obligations in all that is not determined in this title.

ART. 622. Gifts for valuable considerations shall be governed by the laws of contracts, and those for valuable considerations by the provisions of this title with regard to the part exceeding the value of the charge imposed.

ART. 623. A gift is consummated upon the donor having knowledge of its acceptance by the donee.

CHAPTER SECOND.

Persons who can bestow or receive gifts.

ART. 624. All persons who can contract and dispose of their property may bestow gifts.

ART. 625. All persons who are not especially disqualified by law therefor may accept gifts.

ART. 626. Persons who can not enter into contracts can not accept conditional gifts or those involving valuable considerations without the intervention of their legal representatives.

ART. 627. Gifts made to persons, conceived but yet unborn, may be accepted by the persons who would legally represent them if they should already be born.

ART. 628. Gifts made to incapacitated persons are void even though made in a fictitious manner, under the guise of another contract, by a third person.

ART. 629. A gift does not bind the donor nor produce any effect until accepted.

ART. 630. The donee must, under pain of nullity, accept the gift in person or through a person authorized by a special power for the purpose or having a general or sufficient power of attorney.

ART. 631. Persons accepting a gift representing others who can not do so in person are obliged to obtain the notification and record referred to in article 633.

ART. 632. Gifts of personal property may be made verbally or in writing.

The verbal one requires the simultaneous delivery of the thing bestowed as a gift. In the absence of this requisite the gift shall produce no effect if not made in writing and if the acceptance does not appear in the same manner.

ART. 633. In order that a gift of real property may be valid it shall be made in a public instrument, stating therein in detail the property bestowed as a gift and the amount of the charges, which the donee must satisfy.

The acceptance may be made in the same instrument bestowing the gift or in a different one; but it shall produce no effect if not made during the life of the donor.

If made in a different instrument the acceptance shall be communicated to the donor in an authentic manner, and this proceeding shall be recorded in both instruments.

CHAPTER THIRD.

Effects and limitations of gifts.

ART. 634. A gift may include all the actual property of the donor or a part thereof, provided the latter reserves, by legal title or in usufruct,

what is required for his support in a condition corresponding to his circumstances.

ART. 635. A gift can not include future property.

By future property is considered that which the donor can not dispose of at the time of the gift.

ART. 636. Notwithstanding the provisions of article 634, no person can give nor receive, by way of gift, more than what he can give or receive by will.

A gift shall be considered void in all that exceeds said limits.

ART. 637. When a gift has been made to several persons jointly, it shall be understood as in equal shares; and there shall be among them no right of accretion unless the donor has otherwise ordered.

From these provisions are excepted gifts made jointly to husband and wife, who shall have such right if the donor has not disposed otherwise.

ART. 638. The donee is subrogated to all the rights and actions which, in case of eviction, would correspond to the donor. The latter on his side is not obliged to warrant the things bestowed as a gift, unless the gift is for a valuable consideration, in which case the donor shall be liable for the eviction to the amount of the charge.

ART. 639. The donor may reserve to himself the right to dispose of some of the property bestowed as gift or of an amount as a charge thereon; but should he die without having made use of this right, the property or the sum which may have been reserved shall belong to the donee.

ART. 640. Ownership can also be bestowed as a gift to a person, and the usufruct to another or others, with the limitations established by Art. 781 of this code.

ART. 641. The reversion in favor of the donor only, in any case and under any circumstances, may also be validly established, but not in favor of other persons, except in the same cases and under similar limitations, as prescribed in this code for testamentary substitutions.

The reversion, stipulated by the donor in favor of a third person in contravention of the provisions of the foregoing paragraph, is void, but it shall not cause the annulment of the gift.

ART. 642. When the gift has been bestowed, imposing on the donee the duty of paying the debts of the donor, if the clause should contain no other declaration, the former shall only be bound to pay those contracted before the bestowal of the gift.

ART. 643. Should there be no stipulation as to the payment of debts the donee shall be liable for them only if the gift has been made to defraud creditors.

The gift shall always be presumed as having been made to defraud creditors when, at the time of bestowing it, the donor has not reserved to himself property sufficient to pay the debts contracted prior thereto.

CHAPTER FOURTH.

Revocation and reduction of gifts.

ARTICLE 644. Every gift *inter vivos* made by a person having no legitimate children nor descendants nor legitimized by a subsequent marriage is revoked by the mere fact of the occurrence of any of the following cases:

1. When the donor, after the gift, should have legitimate or legitimized or acknowledged natural children, even should they be posthumous.

2. When the child of the donor, whom he supposed dead when he bestowed the gift, is found to be alive.

ART. 645. If the gift is rescinded by the subsequent birth of children, the things bestowed as a gift shall be returned to the donor, or their value, if the donee has sold them.

Should they be mortgaged, the donor may cancel the mortgage, paying the sum secured by it, being entitled to demand the sum paid of the donee.

When the things can not be restored they shall be appraised at their value at the time of the bestowal of the gift.

ART. 646. The action of revocation by the subsequent birth of children shall prescribe after five years, counted from the birth of the last child, or from the legitimation or acknowledgment or from the time news was received of the existence of the one who was believed dead.

This action can not be renounced and is transmitted on the death of the donor to his children and to their legitimate descendants.

ART. 647. The gift shall be revoked at the instance of the donor if the donee has not complied with any one of the conditions imposed upon him by the former.

In such case the things bestowed as a gift shall revert to the donor, all the alienations made by the donee and the mortgages he may have placed thereon being rendered void with the limitation with regard to third parties established in the mortgage law.

ART. 648. A gift may also be revoked at the instance of the donor, by reason of ingratitude, in the following cases:

1. When the donee commits any crime against the person, the honor, or the property of the donor.

2. When the donee charges the donor with any of the crimes giving rise to official proceedings or public accusation, even though he proves it, unless the crime should have been committed against the donee himself, his wife, or the children under his authority.

3. When the latter improperly refuses him support.

ART. 649. When a gift is revoked by reason of ingratitude, the alienations and mortgages made prior to the entry of the complaint for revocation in the registry of property shall, nevertheless, be valid.

Subsequent ones shall be void.

ART. 650. In the case referred to in the first paragraph of the preceding article the donor shall have a right to exact from the donee the value of the properly alienated, which he can not recover from the third persons, or the amount for which they have been mortgaged.

For the appraisal of the value of such property the time the gift was bestowed shall be taken into consideration.

ART. 651. If the gift should be revoked for any of the reasons stated in article 644 or for ingratitude, or when it should be reduced on account of being void, the donee shall not return the fruits, except from the date of the institution of the complaint.

If the revocation should be based on the failure to comply with any one of the conditions imposed by the gift, the donee shall, besides the property, return the fruits he may have collected after the nonfulfillment of the condition.

ART. 652. The action granted the donor for causes of ingratitude can not be renounced in advance. This action prescribes after one year, counted from the time the donor had knowledge of the fact and was able to institute the action.

ART. 653. This action shall not be transmitted to the heirs of the donor if the latter should have been able to institute it and did not do so.

Neither can it be instituted against the heirs of the donee, unless at his death the suit had already been brought.

ART. 654. Gifts which, in accordance with the provisions of article 636, may be void after computing the net value of the property of the donor at the time of his death must be reduced with regard to the excess, but this reduction shall not prevent them from being valid during the life of the donor, nor the donee from appropriating the fruits.

For the reduction of gifts the provisions of this chapter and of articles 820 and 821 of this code shall be observed.

ART. 655. The reduction of gifts can be demanded only by the persons who have a right to a legal portion or to an aliquot part of the estate and their heirs or legal representatives.

The persons included in the preceding paragraph can not renounce their right during the life of the donor, neither by an express statement nor by giving their consent to the gift.

The donees, the legatees who are not to receive an aliquot part, and the creditors of the deceased can not request the reduction or derive any benefit therefrom.

ART. 656. If there are two or more gifts, and all can not be covered by the disposable part of the estate, the latest ones shall either be canceled or reduced with regard to the excess.

TITLE III.

Successions.

GENERAL PROVISIONS.

ART. 657. The rights to the succession of a person are transmitted from the moment of his death.

ART. 658. Succession is granted either by the will of the man as expressed in a will or, in its absence, by provision of law.

The first is called testamentary, the second legal succession.

It may also be bestowed partly by will of man and partly by provision of law.

ART. 659. The inheritance includes all the property, rights, and obligations of a person, which are not extinguished by his death.

ART. 660. An heir is a person succeeding under an universal title; and a legatee, one succeding under a special title.

ART. 661. Heirs succeed the deceased in all his rights and obligations by the mere fact of his death.

CHAPTER FIRST.

Wills.

SECTION FIRST.—*Capacity to depose by will.*

ART. 662. All persons who are not expressly prohibited by law may make a will.

ART. 663. The following are disqualified to make wills:

1. Persons of either sex under 14 years of age.
2. Persons who permanently or temporarily are not of sound mind.

ART. 664. A will made before mental alienation is valid.

ART. 665. Whenever a lunatic desires to make a will during a lucid interval, the notary shall appoint two physicians to examine him previously, and he shall not execute it unless the latter answer for the capacity of the testator, including their opinion in the will, which shall be subscribed by the physicians besides the witnesses.

ART. 666. In order to judge of the capacity of the testator, his condition at the time of the execution of the will only shall be taken into consideration.

SECTION SECOND.—*Wills in general.*

ART. 667. The act by which a person disposes of all his property or of a part of it, to take effect after his death, is called a will.

ART. 668. The testator may dispose of his property either under title of inheritance or under that of legacy.

In case of doubt, even if the testator has not actually used the word "heir," if his will is clear on this point, his disposition shall be valid as made under a title, either universal or of inheritance.

ART. 669. Two or more persons can not make a will conjointly or in the same instrument, either for their reciprocal benefit or for the benefit of a third person.

ART. 670. A will is absolutely a personal act. The making of it, either wholly or partially, can not be left to the discretion of a third person, nor can it be made through a trustee or agent.

Neither can there be left to the discretion of a third person the continuance of the appointment of heirs or legatees, nor the designation

of the portions to which they are to succeed when they are nominally instituted.

ART. 671. The testator may intrust to a third person the distribution of the sums he may leave in general to specified classes, such as relatives, the poor, or charitable institutions, and also the designation of the persons or institutions to which such sums are to be applied.

ART. 672. Any provision relating to the institution of heirs, bequests, or legacies, made by the testator, referring to private memoranda or papers which after his death may appear in his domicile or outside thereof, shall be void if such memoranda or papers do not fulfill the requisites prescribed for holographic wills.

ART. 673. A will executed under duress, deceit, or fraud, shall be void.

ART. 674. A person who, by deceit, fraud, or violence, prevents another person, of whom he is the intestate heir, from unrestrictedly executing his last will, shall be deprived of his right to the inheritance without prejudice to the criminal liability he may have incurred.

ART. 675. Every testamentary provision shall be understood in the literal meaning of its words, unless it clearly appears that the will of the testator was different. In case of doubt, that which appears most in accordance with the intention of the testator, according to the tenor of the same will, shall be observed.

A testator can not prohibit the contest of his will in the cases in which there exists nullity specified by law.

SECTION THIRD.—*Form of wills.*

ART. 676. Wills may be ordinary or special.

Ordinary wills may be holographic, open, or closed.

ART. 677. Military and maritime wills and those executed in foreign countries are considered special.

ART. 678. A will is called holographic when the testator writes it in his own hand in the form and with the requisites mentioned in article 688.

ART. 679. A will is open whenever the testator expresses his last will in the presence of the persons who must authenticate the act, they being informed of its provisions.

ART. 680. A will is closed when the testator, without revealing his last will, declares that it is contained in the instrument which he presents to the persons who are to authenticate the act.

ART. 681. The following can not be witnesses to wills:

1. Women, with the exception of the provisions of article 701.
2. Males under age, with the same exception.
3. Persons who are not residents or domiciled in the place of the execution, with the exception of the cases excepted by law.
4. Blind persons and those totally deaf and dumb.
5. Persons who do not understand the language of the testator.
6. Persons of unsound mind.

7. Persons who have been condemned for the crimes of forgery of public or private instruments, for perjury, and those suffering the penalty of civil interdiction.

8. The clerks, amanuenses, servants, or relatives within the fourth degree of consanguinity or second of affinity of the notary who authenticates the will.

ART. 682. Neither can the heirs and legatees named in an open will, nor the relatives of the same within the fourth degree of consanguinity or second of affinity, be witnesses thereto.

There are not included in this prohibition the legatees and their relatives when the legacy is of some personal property or of a sum of small importance compared with the amount of the estate.

ART. 683. In order that a witness may be declared disqualified, it is necessary that the reason of his disqualification existed at the time of the execution of the will.

ART. 684. The presence of two interpreters, designated by the testator to translate his provision into Spanish, is required for making a will in a foreign language. The will must be written in the two languages.

ART. 685. The notary and two of the witnesses who authenticate the will must be acquainted with the testator, and should they not know him he shall be identified by two witnesses who are acquainted with him and are known to the notary and to the attesting witnesses. The notary and the witnesses shall also assure themselves that in their opinion the testator has the legal capacity required to make a will.

Witnesses authorizing a will without the attendance of a notary, in the cases of articles 700 and 701, are under the same obligation of being acquainted with the testator.

ART. 688. Should it not be possible to identify the person of the testator in the manner prescribed in the preceding article, this circumstance shall be stated by the notary or by the witnesses in a proper case, mentioning the documents which the testator may present for such purpose and giving a personal description of the same.

If the will should be contested for such a cause, the burden of proving the identity of the testator is on the person supporting its validity.

ART. 687. Any will, in the execution of which, the formalities, respectively established in this chapter, have not been observed, shall be void.

SECTION FOURTH.—*Holographic wills.*

ART. 688. Holographic wills can only be executed by persons of age.

In order that this will may be valid, it must be drafted on stamped paper, corresponding to the year of its execution, and be written in its entirety and signed by the testator, giving the year, month, and day of its execution.

If it should contain words erased, corrected, or interlined, the testator must mention them over his signature.

Foreigners may execute holographic wills in their own language.

ART. 689. Holographic wills shall be placed in a protocol, being presented for this purpose to the judge of first instance of the last domicile of the testator, or to the one of the place where he died, within five years, counted from the day of his death. Without this requisite it shall not be valid.

ART. 690. The person with whom such will may have been deposited must present it to the court as soon as he receives notice of the death of the testator, and should he not do so within the ten following days, he shall be liable for the losses and damages which may be caused by the delay.

It may also be presented by any person who may have an interest in the will as heir, legatee, executor, or in any other capacity whatsoever.

ART. 691. After the holographic will has been presented and the death of the testator has been proven, the judge shall open it, if it should be in a closed cover, shall rubricate, together with the clerk, all the leaves and shall prove its identity through three witnesses who are acquainted with the handwriting and signature of the testator, and who depose that they have no reasonable doubt that the will was written and signed by the testator's own hand.

In the absence of competent witnesses, or if those examined have any doubts, and provided the judge considers it proper, he may employ handwriting experts for the purpose of comparison.

ART. 692. For carrying out the proceedings mentioned in the foregoing article, there shall be summoned as soon as possible, the surviving spouse, if there is one, the legitimate ascendants and descendants of the testator, and in the absence of all these, the brothers and sisters.

If these persons do not reside within the judicial district, or their existence is unknown, or being minors or incapacitated persons without legitimate representation, the department of public prosecution shall be cited.

The persons cited may be present at the observance of such proceedings and may make, at the time, verbally, the proper observations with regard to the authenticity of the will.

ART. 693. If the judge considers that the identity of the will has been proven, he shall order that it be placed in the protocol, together with the proceedings, in the registries of the proper notary, who shall give to the interested parties the copies or authenticated copies which may be proper. In other cases he shall refuse to place it in the protocol.

Whatever the decision of the judge may be it shall be carried out, notwithstanding objection, the rights of the persons interested to enforce it in the proper suit being reserved.

SECTION FIFTH.—*Open wills.*

ART. 694. An open will shall be executed before a notary, qualified to act at the place of its execution, and three competent witnesses who

can see and understand the testator and of whom one, at least, must know how and be able to write.

From this rule shall only be excepted the cases expressly mentioned in this section.

ART. 695. The testator shall express his last will to the notary and to the witnesses. After the will has been drafted in accordance with the same, stating the place, year, month, day, and hour of its execution, it shall be read aloud in order that the testator may declare if it is in accordance with his wishes. If so, it shall be signed immediately by the testator and by the witnesses who can do so.

Should the testator declare that he does not know how, or is not able to sign, one of the attesting witnesses or another person shall do so for him at his request, the notary certifying thereto. This shall also be done if any one of the witnesses can not sign.

The notary shall always state that in his judgment the testator has the legal capacity required to execute the will.

ART. 696. When the testator, who intends to make an open will, presents his testamentary provisions in writing, the notary shall draft the will in accordance with the same, and shall read it aloud in the presence of the witnesses, in order that the testator may declare if its contents are the expression of his last will.

ART. 697. A person who is absolutely deaf shall read his will himself; if he does not know how or can not do so he shall designate two persons to read it in his name, always in the presence of the witnesses and of the notary.

ART. 698. If the testator is blind, the will shall be read twice, once by the notary, in accordance with the provisions of article 695, and the other time in the same manner by one of the witnesses or by any other person designated by the testator.

ART. 699. All the formalities mentioned in this section shall take place in a single act, and no interruption shall be allowed, except such a one as may be caused by a momentary incident.

The notary shall certify, at the end of the will, that all said formalities have been complied with and that he is acquainted with the testator or with the witnesses of identification in a proper case.

ART. 700. If the testator is in imminent danger of death, the will may be executed before five competent witnesses without the necessity of a notary.

ART. 701. In case of an epidemic, the will may also be executed without the intervention of a notary, before three witnesses over 16 years of age, male or female.

ART. 702. In the cases of the two foregoing articles, the will shall be written, when possible; otherwise the will shall be valid, even though the witnesses do not know how to write.

ART. 703. The will, executed in accordance with the provisions of the three preceding articles, shall be void if two months should have

elapsed from the time the testator was out of danger of death or the epidemic ceased.

When the testator dies within said period, the will shall also be void, if within three months after his death application is not made to the court of competent jurisdiction in order that the will may be reduced to a public instrument, whether it was executed in writing or verbally.

ART. 704. Wills executed without the authentication of a notary shall be void if they are not afterwards reduced to a public instrument and placed in the protocol in the manner prescribed by the law of civil procedure.

ART. 705. When an open will is declared void by reason of non-compliance with the formalities established for each case, the notary who may have authenticated it shall be liable for the losses and damages incurred if the fault arises from his bad faith or from inexcusable negligence or ignorance.

SECTION SIXTH—*Closed wills.*

ART. 706. A closed will may be written by the testator or by any other person, at his request, on common paper, giving the place, day, month, and year of its execution.

If the testator writes it in person, he shall rubricate all the sheets and affix his signature at the end, after mentioning all the words corrected, erased, or interlined.

Should another person write it, at his request, the testator shall put his full signature on all the sheets and at the foot of the will.

If the testator does not know how or can not sign, another person shall do so for him and rubricate every sheet, at his request, stating the cause of the testator's inability.

ART. 707. In the execution of a closed will, the following formalities shall be observed:

1. The paper on which the will is drafted shall be placed in a closed and sealed envelope in such a manner that the former can not be extracted without breaking the seal.

2. The testator shall appear with the will closed and sealed, or shall close and seal it at the time in the presence of the notary who is to authenticate it and of five competent witnesses, of whom three, at least, must be able to sign.

3. The testator shall declare, in the presence of the notary and of the witnesses, that the envelope he presents contains his will, stating if it is written, signed, and rubricated by him at the foot, or if written by another, and signed by him at the end and on all of its leaves, or if, because he does not know how or can not sign, another person has done it for him, at his request.

4. On the wrapper of the will, the notary shall draft the proper memorandum of its execution, specifying the number and marks of the seals with which it is closed, and certifying that the said formalities have

been observed, to his acquaintance with the testator or to the identification of his person, in the manner prescribed in articles 685 and 686, and to the testator having, in his judgment, the necessary legal capacity to execute a will.

5. After the memorandum has been drafted and read it shall be signed by the testator and by the witnesses who know how to sign, and the notary shall authenticate it with his mark and signature.

If the testator does not know how or can not sign, one of the attesting witnesses or any other person designated by the former shall do so in his name.

6. This circumstance shall also be stated in the memorandum, as well as the place, hour, day, month, and year of the execution.

ART. 708. Blind persons and those who do not know how or can not read can not execute a closed will.

ART. 709. The deaf and dumb and those who can not speak, but who are able to write, may execute a closed will, the following being observed:

1. The will must be written entirely and signed by the testator, stating the place, day, month, and year.

2. On presenting it, the testator shall write on the outside of the envelope, in the presence of the notary and of five witnesses, that said envelope contains his will and that it is written and signed by him.

3. Immediately after what is written by the testator, the memorandum of execution shall be drafted, the notary certifying that the provisions of the foregoing number have been observed, as well as the provisions of article 707, in so far as may be applicable to the case.

ART. 710. After the closed will has been authenticated, the notary shall deliver it to the testator, after placing in the private protocol a certified copy of the memorandum of execution.

ART. 711. The testator may keep the closed will in his possession or intrust it to the custody of a person in whom he has confidence, or deposit it in the hands of the authenticating notary for safe-keeping in his archives.

In the last case, the notary shall give a receipt to the testator, and shall enter in his private protocol, in the margin or immediately after the copy of the memorandum of the execution, that the will remains in his possession. Should the testator subsequently withdraw it he shall sign a receipt immediately after said memorandum.

ART. 712. The notary or a person having in his possession a closed will shall present it to the judge of competent jurisdiction as soon as he learns of the death of the testator.

Should he not do so within ten days, he shall be liable for the losses and damages caused by his negligence.

ART. 713. A person who, with malice, does not present the closed will, which may be in his possession, within the period fixed in the second paragraph of the foregoing article, shall, besides incurring the

liability mentioned therein, lose all right to the inheritance, if entitled to it by reason of being an heir *ab intestato* or as a testamentary heir or legatee.

The same penalty shall be incurred by those who maliciously abstract the closed will from the residence of the testator or of the person who has it in custody or on deposit, and by those concealing, tearing, or rendering it useless in any other manner whatsoever, without prejudice to the proper crimimal liability.

ART. 714. For the opening and placing in a protocol of a closed will the provisions of the law of civil procedure shall be observed.

ART. 715. A closed will, in the execution of which the formalities prescribed in this section have not been observed, shall be void, and the notary who authenticates it shall be liable for the losses and damages which may arise, if it is proven that the fault arose from malice, negligence, or inexcusable ignorance on his part. It shall be valid, however, as a holographic will, if it is written in full and signed by the testator and has furthermore the other conditions required for such wills.

SECTION SEVENTH.—*Military wills.*

ART. 716. In time of war, soldiers in the field, volunteers, hostages, prisoners, and other persons in the army or following the same may execute their wills before any officer having at least the rank of captain.

This provision is applicable to members of an army in a foreign country.

Should the testator be sick or wounded, he may execute it before the chaplain or physician attending him.

If he is with a detachment, before the person in command, even if he be a noncommissioned officer.

In all the cases of this article the presence of two competent witnesses shall always be necessary.

ART. 717. The persons mentioned in the preceding article may also execute a closed will before a *comisario de guerra*,* who shall discharge in such case the duties of a notary, the provisions of articles 706 et seq. being observed.

ART. 718. Wills executed in accordance with the two foregoing articles must be forwarded as soon as possible to the general headquarters and by the latter to the secretary of war.

The secretary, should the testator have died, shall forward the will to the judge of the last domicile of the deceased, and, should he not know it, to the senior judge of Madrid, in order that he may officially cite the heirs and other persons interested in the succession. The latter shall request that it be reduced to a public instrument and be protocoled in the manner prescribed by the Code of Civil Procedure.

Should the will be closed, the judge shall officially open it, in the manner prescribed in said law, after citing and with the intervention of

*An inspector and auditor connected with the paymaster's department.

the department of public prosecution, and, after having opened it, shall inform the heirs and other persons concerned of its contents.

ART. 719. The wills mentioned in article 716 shall lapse four months after the testator has ceased to be in campaign.

ART. 720. During a battle, assault, engagement, and, generally, in all imminent danger of an action of war, a military will may be executed verbally before two witnesses.

But this will shall be void if the testator is saved from the danger in view of which it was made.

Even though he is not saved, the will shall be void if not formally established by the witnesses before the auditor of war or a judicial official following the army, the subsequent proceedings being in accordance with the manner prescribed in article 718.

ART. 721. If the military will should be closed, the provisions of articles 706 and 707 shall be observed, but it shall be executed before the officer and two witnesses required by article 716 for an open will, all of them being required to sign the memorandum of the execution, as well as the testator, if he is able to do so.

SECTION EIGHTH.—*Maritime wills.*

ART. 722. Wills, either open or closed, of persons on board a ship during a sea voyage shall be executed in the following manner:

When the vessel is a man-of-war, before the paymaster or the person discharging his duties, in the presence of two competent witnesses who can see and understand the testator. The captain of the vessel or the person taking his place shall, furthermore, countersign it.

On merchant vessels, the captain or the person taking his place shall authenticate the will in the presence of two competent witnesses.

In either case the witnesses shall be selected from the passengers, if there are any; but one of them at least must be able to sign, and he shall do so for himself and for the testator, if the latter does not know how or can not sign.

If the will is an open one, the provisions of article 695 shall, furthermore, be observed; and if closed, the provisions of section 6 of this chapter, with the exception of what relates to the number of witnesses and to the intervention of a notary.

ART. 723. The will of the paymaster of a man-of-war and of the captain of a merchant vessel shall be authenticated by those who are to substitute them in their office, the provisions contained in the preceding article being observed for the other proceedings.

ART. 724. Open wills executed on the high seas shall be preserved by the commander or captain, and they shall be mentioned in the log book.

A similar mention shall be made of holographic and closed wills.

ART. 725. Should a ship arrive at a foreign port where there is a diplomatic or consular agent of Spain, the commander of the man-of-war or the captain of the merchant vessel shall deliver to said agent a

copy of the open will, or of the memorandum of the execution of the closed one, and of the entry made in the log book.

The copy of the will or of the memorandum must bear the same signatures as the original, if the persons who signed it are alive and on board; otherwise it shall be authenticated by the paymaster or captain who may have received the will, or the one discharging his duties, and those on board who took part in the will shall also sign.

The diplomatic or consular agent shall have the proceedings of the delivery reduced to writing, and after the copy of the will or of the memorandum of its execution, if the will is closed, has been closed and sealed, he shall forward it with a copy of the record in the log book, through the proper channel, to the Secretary of the Navy, who shall order it deposited in the archives of his Department.

The commander or captain who delivers it shall obtain from the diplomatic or consular agent a certificate of having done so and shall enter it in the log book.

ART. 726. When the vessel, either a man-of-war or a merchantman, arrives at the first port of the kingdom, the commander or captain shall deliver the original will, closed and sealed, to the local maritime authority, with a copy of the entry made in the log book, and should the testator have died, a certificate proving it.

The delivery shall be proven in the manner prescribed in the foregoing article, and the maritime authority shall forward the papers, without delay, to the Secretary of the Navy.

ART. 727. If the testator should have died and the will is an open one, the Secretary of the Navy shall proceed in the manner prescribed in article 718.

ART. 728. When the will has been executed by a foreigner, on a Spanish vessel, the Secretary of the Navy shall forward the will to the Secretary of State in order that it may be transmitted, in the proper manner, through diplomatic channels.

ART. 729. If the will is a holographic one and the testator should die during the voyage, the commander or captain shall take possession of the will for the purpose of keeping it in a safe place, mentioning this fact in the log book, and shall deliver the same to the local maritime authority, in the manner and for the purposes prescribed in the foregoing article, when the vessel arrives at the first port of the kingdom.

The same shall be done should it be a closed will, if the testator had it in his possession at the time of his death.

ART. 730. Open and closed wills, executed in accordance with the provisions of this section, shall be void after four months, counted from the day on which the testator landed at a place where he could make a will in the ordinary form.

ART. 731. Should there be danger of shipwreck, the provisions of article 720 shall be applicable to the crews and passengers of men-of-war or merchantmen.

SECTION NINTH.—*Wills made in foreign countries.*

ART. 732. Spaniards may make wills out of the national territory, conforming to the formalities established by the laws of the country in which they may be.

They may also make wills on the high seas, during their passage on a foreign vessel, in accordance with the laws of the country to which the vessel belongs.

They may also make a holographic will, in accordance with article 688, without the requisite of stamped paper, even in countries the laws of which do not admit such wills.

ART. 733. Joint wills, prohibited by article 669, shall not be valid in Spain, executed by Spaniards in a foreign country, even though the laws of the country where they may have been executed authorize them.

ART. 734. Spaniards who are in a foreign country may also execute their wills, open or closed, before a diplomatic or consular agent of Spain residing at the place of their execution.

In these cases said agents shall act as notaries, and all the formalities established by sections fifth and sixth of this chapter shall be respectively observed, the condition of domicile of the witnesses, however, not being necessary.

ART. 735. The diplomatic or consular agent shall forward a copy of the open will, or of the memorandum of execution of the closed will, authenticated with his signature and seal, to the department of state for deposit in its archives.

ART. 736. The diplomatic or consular agent with whom a Spaniard may have deposited his holographic or closed will shall forward it to the department of state upon the death of the testator, with the certificate of death.

The department of state shall have the notice of the death published in the *Gaceta de Madrid*, in order that the persons interested in the inheritance may obtain the will and have it protocoled in the manner prescribed.

SECTION TENTH.—*Revocation and inefficiency of wills.*

ART. 737. All testamentary provisions are essentially revocable, even though the testator should state in the will his wish or resolution not to revoke them.

All clauses annulling future provisions shall be considered as not existing, as well as those in which the testator may order that the revocation of the will should not be valid unless made with certain words or marks.

ART. 738. A will can not be revoked, either wholly or in part, except with the formalities required for making it.

ART. 739. A prior will is revoked by law by a subsequent and perfect will if the testator does not state in the latter his wish of leaving the former in force, in whole or in part.

Nevertheless, a prior will recovers its force if the testator afterwards revokes the subsequent one and expressly declares his wish that the former be valid.

ART. 740. The revocation shall be effective, even though the second will becomes void by reason of the incapacity of the heir or of the legatees designated therein, or by the renunciation of the former or of the latter.

ART. 741. The acknowledgment of an illegitimate child does not lose its legal force, even though the will in which it was made may be revoked.

ART. 742. A closed will found in the domicile of the testator with the cover torn, or the seals broken, or the signatures authenticating it effaced, erased, or corrected is presumed to be revoked.

This will, however, shall be valid should it be proven that this damage occurred without the wish or knowledge of the testator, or should the latter be insane; but, if the cover is found torn and the seals broken, it shall be necessary furthermore to prove the authenticity of the will in order that it may be valid.

If the will is found in the possession of another person, it shall be understood that the damage was caused by such person, and it shall not be valid unless its authenticity is proven if the cover is torn or the seals broken; and if both are intact, but with the signatures effaced, erased, or corrected, the will shall be valid unless it be proven that the instrument was delivered in this condition by the testator himself.

ART. 743. Wills shall become void or testamentary provisions without effect, in whole or in part, only in the cases expressly prescribed in this code.

CHAPTER SECOND.

Inheritances.

SECTION FIRST.—*Capacity to succeed by will or in the absence thereof.*

ART. 744. All persons not disqualified by law may succeed by will or in the absence thereof.

ART. 745. The following are disqualified to succeed:

1. Abortive infants, by such being understood those who are not included among those described in article 30.

2. Associations or corporations not permitted by law.

ART. 746. Church and church chapters, provincial deputations and provinces, municipal councils and municipalities, hospitals and charitable institutions, and those for public instruction, associations authorized or recognized by law, and all other judicial persons may acquire by will, in accordance with the provisions of article 38.

ART. 747. Should the testator dispose of the whole or of part of his property for suffrages and pious works for the benefit of his soul, and does it in an indeterminate manner and without specifying its application, the executors shall sell the property and distribute its proceeds,

giving one-half of it to the diocesan to be employed in said suffrages and to the expenses and necessities of the church, and the other half to the proper civil governor for the charitable institutions of the domicile of the deceased, and, in their absence, for those of the province.

ART. 748. A designation made in favor of a public institution under a condition or imposing a charge thereon shall be valid only if approved by the government.

ART. 749. Provisions made in favor of the poor in general, without the designation of persons or of towns, shall be understood as limited to those of the domicile of the testator at the time of his death should it not clearly appear that his will was otherwise.

The classification of the poor and the distribution of the property shall be made by the person designated by the testator, in the absence of such person by the executors, and should there be none, by the curate, the mayor, and the municipal judge, who shall decide by a majority of votes any doubts which may arise.

The same shall be done if the testator has disposed of his property in favor of the poor of a certain parish or town.

ART. 750. Every provision in favor of an unidentified person shall be void unless in some way the person may become identified.

ART. 751. A provision made generically in favor of the relatives of the testator is understood as made in favor of those nearest in degree.

ART. 752. Testamentary provisions made by the testator during his last illness in favor of the priest who took his confession during the same, of the relatives of the latter within the fourth degree, or of his church, chapter, community, or institute shall not be valid.

ART. 753. Neither shall the testamentary provisions of the ward in favor of his guardian, made before the final accounts of the latter have been approved, be valid, even though the testator should die after their approval.

However, the provisions made by the ward in favor of the guardian when the latter is his or her ascendant, descendant, brother, sister, or spouse shall be valid.

ART. 754. The testator can not dispose of the whole or a part of his estate in favor of the notary who authenticates his will, or of the wife, relatives, or connections of the latter within the fourth degree, with the exception mentioned in article 682.

This prohibition is applicable to the witnesses to an open will executed with or without a notary.

The provisions of this article are also applicable to the witnesses and persons before whom special wills are executed.

ART. 755. A testamentary provision in favor of an incapacitated person, though concealed under the form of a contract involving a valuable consideration or made in the name of a third person, shall be void.

ART. 756. The following are disqualified to succeed by reason of unworthiness:

1. Parents who have abandoned their children or prostituted their daughters or made attempts against their chastity.

2. He who has been sentenced in a trial for having made attempts against the life of the testator, his spouse, descendants, or ascendants.

If the offender should be an heir by force of law, he shall lose his legal portion.

3. He who has accused the testator of a crime for which the law imposes an exemplary punishment, when the accusation is declared libelous.

4. The heir of age who, knowing of the violent death of the testator, has not denounced it to the courts within a month, unless the latter had already acted ex officio.

This prohibition shall cease in cases in which, according to law, there is no obligation to make an accusation.

5. A person sentenced at a trial for adultery with the wife of the testator.

6. He who, by threats, fraud, or violence, forces the testator to make a will or to change it.

7. He who, by the same means, prevents another from making a will or from revoking one already made, or who forges, conceals, or changes a subsequent one.

ART. 757. The reasons for unworthiness shall produce no effect if the testator had knowledge thereof at the time of making the will, or if, having been informed of them subsequently, has condoned the same in a public instrument.

ART. 758. In order to determine the qualification of the heir or legatee, the time of the death of the person whose succession is in question shall be taken into consideration.

In cases Nos. 2, 3, and 5 of article 756, it shall be necessary to wait until the final judgment is rendered, and in No. 4, until the month fixed for the complaint has elapsed.

If the institution or legacy should be conditional, the time for the fulfillment of the condition shall, furthermore, be taken into consideration.

ART. 759. The heir or legatee who should die before the condition is fulfilled, even though he survives the testator, transmits no rights whatsoever to his heirs.

ART. 760. Any person disqualified to succeed, who, in contravention of the prohibition of the preceding articles, has entered into possession of the hereditary property shall be obliged to return it together with its increases and with all the fruits and rents he may have collected.

ART. 761. If the person, excluded from the inheritance by reason of incapacity, should be a child or descendant of the testator and should have children or descendants, the latter shall acquire his rights to the legal portion.

A person excluded shall not enjoy the usufruct and administration of the property thus inherited by his children.

ART. 762. No action can be instituted for a declaration of incapacity after five years have elapsed from the time the incapacitated person took possession of the inheritance or legacy.

SECTION SECOND.—*Designation of heirship.*

ART. 763. A person who has no heirs by force of law may dispose by will of all his property or part of it in favor of any person qualified to acquire it.

A person, who having heirs by force of law, may dispose of his property only in the manner and with the limitations established in section 5 of this chapter.

ART. 764. A will shall be valid, even though it does not contain the designation of an heir, or if the latter does not include all of the property, and even though the person designated does not accept the inheritance or is disqualified to inherit.

In such cases, the testamentary provisions, made in accordance with the laws, shall be complied with, and the remainder of the estate shall go to the legal heirs.

ART. 765. The heirs designated, without a designation of shares, shall inherit share and share alike.

ART. 766. A voluntary heir, who should die before the testator, the person disqualified to inherit, and the person who renounces the inheritance, do not transmit any rights to their heirs, excepting the provisions of articles 761 and 857.

ART. 767. The statement of a false reason for the designation of an heir or for the appointment of a legatee shall be considered as not written, unless it appears from the will that the testator would not have made such designation or legacy, had he had knowledge of the falsity of such reason.

The statement of a reason contrary to law, even though true, shall also be considered as not written.

ART. 768. An heir to whom a certain and specified thing is left shall be considered a legatee.

ART. 769. When the testator appoints some heirs individually and others collectively, as when he says, "I designate as my heirs N and N, and the children of N," those collectively appointed shall be considered as individually appointed, unless it appears in a clear manner that the will of the testator was otherwise.

ART. 770. If the testator should designate his brothers or sisters, and he has some of full blood and others on the side of the father or mother only, the inheritance shall be divided as in cases of intestacy.

ART. 771. When the testator appoints to the succession a person and his children, they shall all be understood as designated simultaneously and not successively.

ART. 772. The testator shall designate the heir by his name and surname, and when there are two having the same names, he must state some circumstance by which the one designated may be identified.

Even though the testator may have omitted the name of the heir, should he designate him in such manner that there can be no doubt as to what person has been designated, the designation shall be valid.

ART. 773. An error in the name, surname, or qualities of the heir shall not vitiate the designation when it may be possible, in any other manner, to know with certainty who is the person appointed.

If among persons of the same name and surname there is equality of circumstances, and the latter are such as not to permit the identification of the person who is designated, none of them shall be an heir.

SECTION THIRD.—*Substitution.*

ART. 774. The testator may substitute one or more persons in the place of the heir or heirs designated in case they die before him or do not wish or can not accept the inheritance.

Simple substitution, without expressing cases, includes the three mentioned in the foregoing paragraph unless the testator has ordered otherwise.

ART. 775. Parents and other ascendants may appoint substitutes for their descendants under 14 years of age, of both sexes, in case they should die before said age.

ART. 776. The ascendant may appoint a substitute for the descendant over 14 years of age who, in accordance to law, has been declared disqualified on account of being of unsound mind.

The substitution referred to in the foregoing paragraph shall be without effect by the will of the incapacitated person made during a lucid interval or after having recovered his reason.

ART. 777. The substitutions referred to in the two foregoing articles, when the substitute has heirs by force of law, shall only be valid in so far as they do not prejudice the legitimate rights of the latter.

ART. 778. Two or more persons may be substituted for a single one, or a single person for two or more heirs.

ART. 779. If the heirs designated in unequal portions should be substituted for each other, they shall have in the substitution the same portions as in the designation, unless it clearly appears that the will of the testator was otherwise.

ART. 780. The substitute shall be subject to the same charges and conditions as imposed upon the person designated, unless the testator has expressly disposed to the contrary, or when the charges or conditions are merely personal with regard to the heir designated.

ART. 781. Substitutions in trust, by virtue of which the heir is intrusted with preserving and transmitting to a third person the whole or part of the inheritance, shall be valid and effective, provided they do not go beyond the second degree, or that they are made in favor of persons living at the time of the death of the testator.

ART. 782. Substitutions in trust can never impair the legal portion. Should they fall upon the third destined to the betterment, they can be made in favor of the descendants only.

ART. 783. In order that appointments to substitutions in trust may be valid they must be expressly made.

A fiduciary is bound to deliver the inheritance to the *cestui que trust* without any other deductions than those arising from legitimate expenses, credits, and improvements, except in case the testator has disposed otherwise.

ART. 784. The *cestui que trust* shall acquire the right to the succession from the time of the death of the testator, even though he dies before the fiduciary. The right of the former shall pass to his heirs.

ART. 785. The following shall produce no effect:

1. Substitutions in trust not made in an express manner, either by giving them this name or by imposing upon the substitute the absolute obligation of delivering the property to a second heir.

2. Provisions containing perpetual prohibitions to alienate, and even a temporary one, not within the limits fixed in article 781.

3. Those imposing upon the heir the charge of paying a certain income or pension to several persons successively beyond the second degree.

4. Those, the object of which is to leave to a person the whole or part of the inheritance in order that he may apply or invest it, according to secret instructions given him by the testator.

ART. 786. The nullity of a substitution in trust shall not prejudice the validity of the designation nor the heirs first designated; the *cestui que trust* clause shall simply be considered as not written.

ART. 787. The provision by which the testator leaves the whole or a part of the inheritance to a person and the usufruct to another shall be valid. If several persons are designated to enjoy the usufruct, not simultaneously, but successively, the provisions of article 781 shall be observed.

ART. 788. A provision imposing upon an heir the obligation of periodically investing specified sums in charitable works, as dowries for poor maidens, pensions for students, or in favor of the poor, or for any charitable institution, or of public instruction, shall be valid under the following conditions:

If the charge is imposed on real property and is temporary, the heir or heirs may dispose of the encumbered estate, the lien not being removed until its record is canceled.

If the charge is perpetual, the heir may capitalize it and invest the capital at interest in a first and sufficient mortgage.

The capitalization and investment of the capital shall be made with the intervention of the civil governor of the province after hearing the department of public prosecution.

In any case, if the testator should not have established an order for the administration and application of the legacy for charity, the proper administrative authority, according to law, shall do it.

ART. 789. All that is prescribed in this chapter with regard to heirs shall also be applicable to legatees.

SECTION FOURTH.—*Imposition of heirs and mandatory legatees to give a term.*

ART. 790. Testamentary provisions, either by universal or special title, may be made conditionally.

ART. 791. The conditions imposed upon heirs and legatees shall be governed by the rules established for conditional obligations in all that is not prescribed in this section.

ART. 792. Impossible conditions and those contrary to law and good morals shall be considered as not imposed and shall not prejudice the heir or legatee in any manner whatsoever, even when the testator disposes otherwise.

ART. 793. The absolute condition of not contracting a first or subsequent marriage shall be considered as not imposed, unless such condition has been imposed on the widower or widow by the deceased spouse, or by the ascendants or descendants of the same.

Nevertheless, usufruct, use, or occupancy, or a pension or personal services may be bequeathed to a person for the time during which he or she remains unmarried or widowed.

ART. 794. A provision made under the condition that the heir or legatee shall make in his will some provision in favor of the testator or of another person shall be void.

ART. 795. A purely compulsory condition imposed upon the heir or legatee must be fulfilled by him when, after the death of the testator, he is informed thereof.

The case is excepted in which the condition has already been fulfilled and therefore can not be carried out anew.

ART. 796. When the condition is casual or mixed, it shall be sufficient if it be fulfilled or complied with at any time during the life or after the death of the testator, unless he has ordered otherwise.

Should it have existed or should it have been fulfilled at the time of the execution of the will and the testator did not know it, it shall be considered as fulfilled.

If he had knowledge thereof, it shall be considered as fulfilled only when of such nature that it can no longer exist or be carried out anew.

ART. 797. The statement of the object of the designation or of the legacy or the application to be given to what has been left by the testator, or the charge imposed by the same, shall not be considered as a condition, unless it appears that such was his will.

What has been left in this manner may be immediately claimed and is transmissible to the heirs who may secure the fulfillment of the orders of the testator and the repayment of what they may have received, with its fruits and interest, should they fail to comply with this obligation.

ART. 798. If, without the fault or a personal act of the heir or legatee, the designation or the legacy referred to in the foregoing article can not be complied with in the exact terms ordered by the testator, it

shall be fulfilled in a manner as nearly analogous and in conformity with his will as possible.

When the person interested in its fulfillment or nonfulfillment should prevent its compliance without fault or a personal act of the heir or legatee, the condition shall be considered as fulfilled.

ART. 799. Conditions precedent do not prevent the heir or legatee from acquiring their respective rights and transmitting them to their heirs, even before their fulfillment.

ART. 800. If the compulsory condition imposed upon the heir or legatee is a negative one, or of not giving or not doing something, they shall fulfill it by giving security that they will not do or give what was prohibited by the testator, and that in case of contravention they will return what they may have received, with its fruits and interest.

ART. 801. If the heir is designated under a condition precedent, the estate shall be placed in administration until the condition is complied with or until there is a certainty that it can not be fulfilled.

The same shall be done when the heir or legatee should not give the security, in the case of the foregoing article.

ART. 802. The administration referred to in the foregoing article shall be intrusted to the heir or heirs, unconditionally designated, when among them and the conditional heir there exists the right of accretion. The same shall be understood with regard to legatees.

ART. 803. If the conditional heir has no coheirs, or, having them, there does not exist the right of accretion among them, the former shall take charge of the administration upon giving security.

Should he not give it, the administration shall be conferred upon the presumptive heir, also giving security; and should neither of them give security, the court shall appoint a third person to take charge of it, also giving security, which shall be given with the intervention of the heir.

ART. 804. These administrators shall have the same rights and obligations as administrators of the property of an absentee.

ART. 805. A statement of the day or time when the effect of the designation of heir or legatee shall begin or cease shall be valid.

In either case the legal successor shall be considered as designated until the period fixed arrives or expires. But in the first case the latter shall not enter into possession of the property until after having given sufficient security with the intervention of the heir designated.

SECTION FIFTH.—*Legal portions.*

ART. 806. A legal portion is that part of the property which the testator can not dispose of because the law has reserved it for specified heirs, called, on that account, heirs by force of law.

ART. 807. Heirs by force of law are:

1. Legitimate children and descendants, with regard to their legitimate parents and ascendants.

2. In the absence of the foregoing, the legitimate parents and ascendants, with regard to their legitimate children and descendants.

3. The widower or widow, the natural children legally acknowledged, and the father or the mother of the latter, in the manner and extent established in articles 834, 835, 836, 837, 840, 841, 842, and 846.

ART. 808. The legal portion of legitimate children and descendants is composed of two-thirds of the hereditary estate of the father and of the mother.

Nevertheless, the latter may dispose of one of the two thirds forming the legal portion in order to apply it as a betterment to their legitimate children and descendants.

The remaining third shall be at their free disposal.

ART. 809. The legal portion of the parents or ascendants is constituted by one half of the hereditary estate of the children and descendants. The latter may unrestrictedly dispose of the other half, with the exception of what is established in article 836.

ART. 810. The legal portion reserved to the parents shall be divided between both equally; if one of the parents should have died, the surviving one shall receive the whole.

If the testator leaves neither a father nor a mother, but ascendants in the same degree on the paternal or maternal side, the estate shall be divided equally between both lines. If the ascendants should be of a different degree, it shall wholly belong to the nearest ones of either line.

ART. 811. The ascendant who inherits property from his descendant, acquired by the latter for a good consideration from another descendant or from a brother or sister, is obliged to reserve the property he may have acquired by force of law in favor of the relatives within the third degree belonging to the line from which such property originated.

ART. 812. Ascendants succeed, to the exclusion of all other persons, to things given by them to their children or descendants who died without issue when the very objects donated are included in the inheritance. Should they have been alienated, they shall succeed to all the actions which the donee may have with regard to them, and to the value should they have been sold, or to the property by which they were substituted if they were bartered or exchanged.

ART. 813. A testator can not deprive the heirs of his legal portion except in the cases expressly fixed by law.

Neither can he impose upon it any burden, condition, or substitution of any kind whatsoever, with exception of what has been prescribed with regard to the usufruct of the surviving spouse.

ART. 814. The preterition of one or of all of the heirs, by force of law, in a direct line, either living at the time of the execution of the will or born after the death of the testator, shall void the designation of heir; but the legacies and betterments shall be valid, in so far as they are not illegal.

The preterition of the widower or widow does not annul the designation, but the person omitted shall preserve all the rights granted him by articles 834, 835, 836, and 837 of this Code.

If the omitted heirs by force of law die before the testator, the designation shall be valid.

ART. 815. The heir by force of law to whom the testator has left, for any reason whatsoever, less than the legal portion due him may demand the fulfillment thereof.

ART. 816. All renunciations or compromises with regard to a future legal portion between the persons owing it and their heirs by force of law are void, and the latter may claim it upon the death of the former; but they must bring into the collation whatever they may have received by reason of the renunciation or compromise.

ART. 817. Testamentary provisions impairing the legal portion of heirs by force of law shall be reduced on petition of the same in so far as they are illegal or excessive.

ART. 818. In order to determine the legal portion, the value of the property remaining on the death of the testator, after deducting all debts and charges, without including therein those imposed in the will, shall be taken into consideration.

To the net value of the hereditary estate shall be added the value of all the collationable gifts bestowed by the said testator at the time they were made.

ART. 819. Gifts made to children which are not betterments shall be considered as part of their legal portion.

Gifts made to strangers shall be charged to the free part of which the testator may have been able to dispose by his last will.

In so far as they be illegal or exceed the portion which can be disposed of, they shall be reduced according to the rules of the following articles.

ART. 820. After the legal portion has been fixed in accordance with the two foregoing articles, the reduction shall be made as follows:

1. Gifts shall be respected in so far as the legal portion can be covered, reducing or annulling, if necessary, the legacies made in the will.

2. The reductions of the latter shall be made pro rata, without any distinction whatsoever.

If the testator has ordered that a certain legacy be paid in preference to others, the former shall not suffer any reduction, until after the latter have been applied in full to the payment of the legal portion.

3. If the legacy consists of a usufruct or life annuity, the value of which may be considered greater than that of the portion which can be disposed of, the heirs by force of law may choose between complying with the testamentary provision or delivering to the legatee the part of the inheritance of which the testator could freely dispose.

ART. 821. If the legacy subject to reduction should consist of an estate which can not be well divided, it shall go to the legatee, if the reduction does not absorb one-half of its value, and otherwise, to the

heirs by force of law; but one shall pay the other what may be due them in cash.

A legatee having a right to a legal portion may retain the entire estate, provided its value does not exceed the amount of the portion which can be disposed of and the share pertaining to him by way of legal portion.

ART. 822. If the heirs or legatees do not wish to make use of the rights granted them in the foregoing article, any of them who did not have such right may exercise it; should he not wish to do so, the estate shall be sold at public auction at the instance of any of the persons interested.

SECTION SIXTH.—*Betterments* (*mejoras*).

ART. 823. The father or the mother may dispose of one of the two thirds destined as the legal portion in favor of one or more of their children or descendants.

This portion is called a betterment (*mejora*).

ART. 824. No other incumbrances can be imposed upon the betterment than those which may be established in favor of the heirs by force of law or their descendants.

ART. 825. No gift by contract *inter vivos*, either simple or for a valuable consideration, in favor of children or descendants who may be heirs by force of law shall be considered as a betterment if the donor has not expressly declared his intention to that effect.

ART. 826. The promise to give or not to give a betterment made in a public instrument of a marriage agreement shall be valid.

Any provision of the testator in contravention of the promise shall not have any effect.

ART. 827. The betterment, even if made with the delivery of the property, shall be revokable, unless it has been made in a marriage agreement or by a contract involving a valuable consideration made with a third person.

ART. 828. A bequest or legacy made by the testator to one of his children or descendants shall not be considered as a betterment, except when the testator has expressly declared such to be his intention or when it can not be included in the portion he can freely dispose of.

ART. 829. A betterment may be given in a specified thing. If its value exceeds the third destined to the betterment and the share of the legal portion corresponding to the person who receives the betterment, the latter must pay the difference in cash to the other persons interested.

ART. 830. The authority to give betterments can not be delegated to a third person.

ART. 831. Notwithstanding the provisions of the foregoing article, in marriage agreements it shall be valid to stipulate that if one of the spouses dies intestate, the widower or widow, who has not contracted a new marriage, may distribute, according to his or her prudent judgment, the property of the deceased, and give betterments in the same

to the children in common, without prejudice to the legal portions and to the betterments given by the deceased while alive.

ART. 832. If the betterment should not have been granted in a specified thing it shall be paid out of the property of the inheritance, there being observed, in so far as possible, the rules established by articles 1061 and 1062, in order to procure equality of the heirs in the distribution of the property.

ART. 833. The legitimate child or descendant receiving a betterment may renounce the inheritance and accept the betterment.

SECTION SEVENTH.—*Rights of the surviving spouse.*

ART. 834. The widower or widow who, on the death of his or her spouse, is not divorced, or should be so by the fault of the deceased spouse, shall have a right to a portion in usufruct equal to that corresponding by way of legal portion to each of the legitimate children or descendants who have not received any betterment.

If one legitimate child or descendant only survives, the widower or widow shall have the usufruct of the third destined to the betterment, the former preserving the direct ownership until, on the death of the surviving spouse, the title is merged in him.

If the spouses should be separated by a suit for divorce, the result of the suit shall be awaited.

If there should have been a pardon or a reconciliation between the divorced spouses, the surviving one shall preserve his or her rights.

ART. 835. The hereditary portion, allotted in usufruct to the widowed spouse, must be taken from the third of the property destined to the betterments of the children.

ART. 836. Should the testator not leave any descendants, but only ascendants, the surviving spouse shall have a right to the third of the estate in usufruct.

This third shall be taken from the free half, the testator being allowed to dispose of the ownership of the same.

ART. 837. If the testator should leave neither legitimate ascendants nor descendants, the surviving spouse shall be entitled to one-half of the estate also in usufruct.

ART. 838. The heirs may satisfy the surviving spouse for his or her part of usufruct, assigning to him or her a life annuity, or the proceeds from specified property, or a sum in cash, making a mutual agreement, and, in the absence thereof, by virtue of a judicial mandate.

Until this has been done all the property of the inheritance shall be liable for the payment of the part of the usufruct pertaining to the surviving spouse.

ART. 839. In case of the survival of the children of two or more marriages, the usufruct pertaining to the widowed spouse of the second marriage shall be taken from the third at the free disposal of the parents.

SECTION EIGHTH.—*Rights of illegitimate children.*

ART. 840. When the testator leaves legitimate children or descendants, and natural children, legally acknowledged, each of the latter shall have a right to one-half of the portion pertaining to each of the legitimate children who have not received any betterment, provided it can be included in the third which may be freely disposed of, from which it must be taken, after the burial and funeral expenses have been deducted.

The legitimate children may pay the portion pertaining to the natural ones in cash, or in other property of the estate, according to just rules.

ART. 841. Should the testator not leave any legitimate children or descendants, but legitimate ascendants, the acknowledged natural children shall have a right to one-half of the part of the estate which can be freely disposed of by the testator.

This is understood without prejudice to the legal portion of the surviving spouse, in accordance with article 836; so that when the spouse survives with acknowledged natural children, what may be lacking to make up their legal portion shall be awarded to them as a naked property right during the life of the spouse.

ART. 842. When the testator leaves no legitimate descendants or ascendants, the acknowledged natural children shall be entitled to a third of the inheritance.

ART. 843. The rights granted natural children by the foregoing article are transmitted on their death to their legitimate descendants.

ART. 844. The hereditary portion of children legitimized by royal concession shall be equal to that established by law in favor of acknowledged natural children.

ART. 845. Illegitimate children who have not the character of natural children shall be entitled to support only.

The obligation of the person who is to support them shall be transmitted to his or her heirs, and shall continue until said children attain their majority, and in case they should be incapacitated, while the incapacity lasts.

ART. 846. The right of succession which the law grants natural children extends reciprocally in similar cases to the natural father or mother.

ART. 847. The gifts which the natural child may have received during its life from its father or mother shall be charged to its legal portion.

Should they exceed the third which can be freely disposed of, they shall be reduced in the manner prescribed in article 817 et seq.

SECTION NINTH.—*Disinheritance.*

ART. 848. Disinheritance can only take place for one of the reasons expressly fixed by law.

ART. 849. Disinheritance can only be made in a will mentioning therein the legal reason on which it is based.

ART. 850. The proof of the truth of the reason for disinheritance shall be established by the heirs of the testator should the disinherited person deny it.

ART. 851. Disinheritance made without a statement of the reason, or for a reason the truth of which, if contradicted, should not be proven or which should not be one of those mentioned in the four following articles, shall annul the designation of heirship in so far as it prejudices the person disinherited, but the legacies, betterments, and other testamentary provisions, in so far as they do not prejudice said legal portion, shall be valid.

ART. 852. Sufficient causes for disinheritance are, in the respective cases, those of disqualification to succeed by reason of unworthiness, mentioned in Nos. 1, 2, 3, 5, and 6 of article 756.

ART. 853. Besides those specified in Nos. 2, 3, 5, and 6 of article 756 for the disinheritance of children and descendants, legitimate as well as natural, the following shall be sufficient causes:

1. For having refused, without legal cause, support to the father or ascendant who disinherits him.

2. For having used personal violence or words of gross insult against the testator.

3. If the daughter or granddaughter has become a prostitute.

4. For having been condemned for a crime punished by the penalty of civil interdiction.

ART. 854. Besides the causes mentioned in Nos. 1, 2, 3, 5, and 6 of article 756, the following shall also be sufficient causes for disinheriting parents or ascendants, either legitimate or natural:

1. The loss of the parental authority for the causes mentioned in article 169.

2. The refusal of support to the children or descendants without legal cause.

3. An attempt of one of the parents against the life of the other, should they not have become reconciled.

ART. 855. Besides the causes mentioned in Nos. 2, 3, and 6 of article 756, the following shall also be sufficient cause for disinheriting a spouse:

1. Those which are a cause for divorce according to article 105.

2. Those which are a cause for the loss of the parental authority in accordance with article 169.

3. The refusal to support the children or the other spouse.

4. An attempt against the life of the spouse making the will, should there not have been a reconciliation.

In order that the causes which are reasons for divorce may also be causes for disinheritance, it is necessary that the spouses do not live under the same roof.

ART. 856. A subsequent reconciliation of the offender with the offended deprives the latter of the right to disinherit and renders a disinheritance already made without effect.

ART. 857. The children of the person disinherited shall take his or her place and shall preserve the rights of heirs by force of law with regard to the legal portion, but the disinherited parent shall not have the usufruct nor the administration of the property of the same.

SECTION TENTH.—*Legacies and bequests.*

ART. 858. A testator may charge with legacies and bequests, not only his heir, but also the legatees.

The latter shall not be liable for the charge only to the extent of the value of the legacy.

ART. 859. When the testator charges one of the heirs with a legacy the latter only shall be obliged to fulfill the same.

Should he not charge any one in particular, all shall be liable in the same proportion in which they may be heirs.

ART. 860. The person who is obliged to deliver the legacy shall be liable, in case of eviction, if the thing is undetermined and is designated only in class or kind.

ART. 861. The legacy of another's property, when the testator knew at the time of bequeathing it that it was not his, is valid. The heir is obliged to acquire it for delivery to the legatee; and should it not be possible for him to do so to pay the latter its just value.

The proof that the testator knew that the thing was another's lies with the legatee.

ART. 862. If the testator did not know that the thing he bequeathed was another's the legacy shall be void.

But it shall be valid should he acquire it after the execution of the will.

ART. 863. A legacy made to a third person of a thing belonging to the heir or to a legatee shall be valid, and they, on accepting the succession, must deliver the thing bequeathed or its just value, with the limitation established in the following article.

The provisions of the foregoing paragraphs are understood without prejudice to the legal portion of the heirs by force of law.

ART. 864. When the testator, heir, or legatee have only a part or a right in the thing bequeathed, the legacy shall be understood as limited to said part or right, unless the testator expressly declares that he bequeathed the thing in its entirety.

ART. 865. A legacy of things which are not marketable is void.

ART. 866. The legacy of a thing, which at the time of the execution of the will already belonged to the legatee, even though another person has some right thereto, shall not have any effect.

If the testator expressly orders that the thing should be freed from this right or charge the legacy shall be valid in that respect.

ART. 867. Should the testator bequeath something which is pledged or mortgaged for the security of a recoverable debt, the payment of the latter shall be made by the heir.

If the legatee should pay said debt because the heir has not done so, the former shall be subrogated in the place and rights of the creditor to proceed against the heir.

Any other charge, perpetual or temporary, for which the thing bequeathed is liable, passes with it to the legatee, but in either case the income and interest earned up to the time of the death of the testator are a lien on the inheritance.

ART. 868. If the thing bequeathed should be subject to usufruct, use, or occupancy, the legatee must respect said rights until they are legally extinguished.

ART. 869. The legacy shall have no effect:

1. If the testator changes the thing bequeathed in such manner that it does not retain either the form or the denomination it previously had.

2. If the testator alienates, for any consideration or reason whatsoever, the thing bequeathed or a part thereof, it being understood, in the latter case, that the bequest is without effect only with regard to the part alienated. If, after the alienation, the thing should revert to the ownership of the testator, even though it were by reason of the nullity of the contract, the bequest shall not be valid, after such fact, excepting the case in which the reacquisition takes place on account of an agreement of resale.

3. If the thing bequeathed is entirely lost during the life of the testator or after his death, without the fault of the heir. Nevertheless, the person obliged to pay the legacy shall be liable for the eviction, if the thing bequeathed should not have been determined in kind in accordance with the provisions of article 860.

ART. 870. The legacy of a credit against a third person or of a release or waiver of a debt of the legatee shall be valid only with regard to that part of the credit or debt existing at the time of the death of the testator.

In the first case, the heir shall perform by assigning to the legatee all the actions he may have against the debtor.

In the second, by giving the legatee a receipt, should he request one.

In both cases the legacy shall include the interest which may be due the testator at the time of his death on the credit or debt.

ART. 871. The legacy referred to in the foregoing article is void if the testator, after having made it, should sue the debtor for the payment of his debt, even if said payment should not have been made at the time of the death.

Only the right of pledge is waived by the legacy made to the debtor of a thing pledged.

ART. 872. The generic legacy of waiver or release of debts includes those existing at the time of the execution of the will, and not subsequent ones.

ART. 873. A legacy made to a creditor shall not be considered as a payment of his credit, unless the testator should so expressly declare.

In such case, the creditor shall have a right to collect the excess of the credit or of the legacy.

ART. 874. In alternative legacies the provisions for obligations of the same kind shall be observed, excepting the modifications arising from the express will of the testator.

ART. 875. A legacy of generic personal property shall be valid even though there may not be things of the same kind in the estate.

A legacy of undetermined real estate shall be valid only if there is such property in the estate.

The heir shall have the right of option, and shall perform by giving a thing which may not be either of inferior or superior quality.

ART. 876. Whenever the testator expressly leaves an option to the heir or to the legatee, the former may give or the latter may select what he may consider best.

ART. 877. If the heir or legatee can not make the choice, in case it has been granted him, his right shall pass to the heirs; but a choice once made shall be irrevocable.

ART. 878. If the thing bequeathed belonged to the legatee at the date of the will the legacy shall be void, even though it may have been alienated subsequently.

If the legatee has acquired it for a good consideration after said date he can claim nothing for it; but if it should have been acquired for a valuable consideration, he may demand of the heir an indemnity for what he may have given to acquire it.

ART. 879. A legacy for education lasts until the legatee is of age.

That for support lasts during the life of the legatee, if the testator does not dispose otherwise.

If the testator has not fixed any sum for said legacies, it shall be fixed in accordance with the position and condition of the legatee and the amount of the inheritance.

If the testator was, during his life, in the habit of giving the legatee a certain sum of money or other things by way of support, the same amount shall be considered as bequeathed unless it is greatly disproportionate with the amount of the estate.

ART. 880. If a periodical pension, or a fixed annual, monthly, or weekly sum is bequeathed, the legatee may demand the first payment upon the death of the testator, and the following ones at the beginning of each period, without any right of reimbursement, even though the legatee should die before the expiration of the period begun.

ART. 881. A legatee acquires a right to the pure and simple legacies from the death of the testator, and transmits it to his heirs.

ART. 882. If the legacy is of a specific and determined thing, belonging to the testator, the legatee acquires the ownership thereof from the death of the former, as well as the fruits or income due, but not those due and unpaid before said death.

The thing bequeathed shall, from the same instant, be at the risk of the legatee, who, therefore, shall bear its loss or impairment, as well as being benefited by its increase or improvement.

ART. 883. The thing bequeathed shall be delivered, with all its accessories and in the condition in which it may have been on the death of the testator.

ART. 884. If the bequest should not be of a specific and determined thing, but generic or of quantity, its fruits and interest from the death of the testator shall belong to the legatee if the testator should have expressly so ordered.

ART. 885. The legatee can not take possession of the thing bequeathed of his own authority, but must request its delivery and possession of the heir or of the executor, when the latter should be authorized to give it.

ART. 886. The heir shall deliver the thing bequeathed if he is able to do so, and does not perform by paying its value.

Legacies in cash must be paid in specie, even though there be none in the estate.

The necessary expenses for the delivery of the thing bequeathed shall be for the account of the estate, but without prejudice to the legal portion.

ART. 887. If the assets of the estate should not be sufficient to cover all the legacies, their payment shall be made in the following order:

1. Remunerative legacies.
2. Legacies of specified and determined things forming a part of the estate.
3. Legacies which may have been declared by the testator as preferred.
4. Those for support.
5. Those for education.
6. All others pro rata.

ART. 888. If the legatee can not or should not wish to accept the bequest, or said bequest for any reason should not be valid, it shall be merged into the whole of the estate, excepting cases of substitution and rights of accretion.

ART. 889. The legatee can not accept a part of the legacy and repudiate the other part, should the latter be onerous to him.

Should he die before accepting the legacy, leaving several heirs, one of them may accept and another repudiate the part pertaining to him in the legacy.

ART. 890. A legatee of two legacies, one of which is onerous, can not renounce the latter and accept the former. If both are either onerous or gratuitous, he is free to accept all of them or repudiate the one he wishes.

The heir who is at the same time a legatee may renounce the inheritance and accept the legacy, or renounce the latter and accept the former.

ART. 891. If the entire estate is distributed in legacies, the debts and charges of the same shall be charged to the legatees, pro rata in proportion to their shares, unless the testator should have provided otherwise.

SECTION ELEVENTH.—*Executors.*

ART. 892. A testator may appoint one or more executors.

ART. 893. A person who is not qualified to bind himself can not be an executor.

A married woman may be an executrix with the consent of her husband, which shall not be necessary should she be legally separated from him.

A minor can not be an executor, not even with the authorization of the father or of the guardian.

ART. 894. Executors may be universal or special.

In any case executors may be appointed either severally, successively, or jointly.

ART. 895. Should the executors be appointed severally, only those acts performed by all of them together, or by one of them legally authorized by the others, shall be valid; and, in case of disagreement, when the act has been agreed to by the majority.

ART. 896. In cases of extreme urgency, one of the several executors may, under his personal liability, perform the acts which may be necessary, giving notice thereof immediately to the others.

ART. 897. If the testator should not clearly establish the appointment of joint executors nor determine the order in which they are to discharge their duties, it shall be understood that they have been appointed severally, and they shall discharge their duties in the manner prescribed in the two foregoing articles.

ART. 898. Executorship is a voluntary office, and it shall be understood as accepted by the person appointed thereto should he not excuse himself within six days following that on which he has received notice of his appointment, or if he was already aware thereof, during the six days following that on which he had knowledge of the death of the testator.

ART. 899. An executor who accepts this office is bound to act; but he may renounce it, alleging a cause which is sufficient in the sound discretion of the judge.

ART. 900. The executor who does not accept the office, or renounces it without sufficient cause, shall lose what the testator may have left him, excepting always his right to the legal portion.

ART. 901. Executors of wills shall have all the powers expressly conferred upon them by the testator and which are not contrary to law.

ART. 902. Should the testator not have specially determined the powers of the executors they shall have the following:

1. To dispose and pay the suffrages and funeral expenses of the testator in accordance with the provisions made by him in his will and, in their absence, according to the customs of the town.

2. To pay, with the knowledge and consent of the heir, the cash legacies.

3. To carefully see to the execution of the other provisions of the will and maintain, when just, its validity in and out of court.

4. To take the necessary precautions for the preservation and custody of the property, with the intervention of the heirs who may be present.

ART. 903. Should there not be in the estate cash enough for the payment of the funeral expenses and legacies, and the heirs should not contribute from their own funds thereto, the executors shall sell the personal property; and should the proceeds therefrom not be sufficient, the real property shall be sold, with the intervention of the heirs.

If a minor, absentee, corporation, or public institution should have any interest in the estate, the sale of the property shall take place with the formalities prescribed by law for such cases.

ART. 904. The executor for whom the testator has not fixed a term must fulfill his office within a year, counted from his acceptance or from the conclusion of the litigation which may have been instituted with regard to the validity or nullity of the will or of any one of its provisions.

ART. 905. Should the testator desire to extend the legal term, he must expressly fix the time of the extension. Should he not have fixed it, it shall be understood that the term is extended for one year.

If after the expiration of this extension the will of the testator should not yet have been complied with, the judge may grant another term for the time which may be necessary, in view of the circumstances of the case.

ART. 906. The heirs and legatees may, by common consent, extend the term of the executorship for the time they may consider necessary; but if the agreement is only that of a majority the extension can not exceed one year.

ART. 907. The executors shall submit an account of their administration to the heirs.

Should they have been appointed, not in order to deliver the property to determined heirs, but to invest or distribute the same in the manner ordered by the testator in the cases allowed by law, they shall submit their accounts to the judge.

Any provision of the testator in contravention of this article shall be void.

ART. 908. Executorship is a gratuitous office. The testator, nevertheless, may assign the executors the remuneration he may consider proper; all without prejudice to the right they may have to collect what may be proper for their work in the division, or for any other professional services.

If the testator bequeathes or designates jointly any remuneration for the executors, the shares of those who do not accept the office shall accrue to those who may discharge it.

ART. 909. An executor can not delegate the office unless he has express authority therefor from the testator.

ART. 910. Executorship terminates by the death, incapacity, renunciation, or removal of the executor, and by the lapse of the term fixed by the testator, by law, and, in a proper case, by the persons interested.

ART. 911. In the cases of the foregoing article, and in case the executor has not accepted the office, the execution of the will of the testator shall devolve upon the heirs.

CHAPTER THIRD.

Intestate succession.

SECTION FIRST.—*General provisions.*

ART. 912. Legitimate succession takes place—

1. If a person dies without a will, or with a void will, or which may have lost its validity subsequently.

2. When the will does not contain the designation of heirship to all or part of the property, or does not dispose of all that belongs to the testator. In such case legitimate succession shall take place only with regard to the property of which the testator has not disposed.

3. When the condition imposed for the designation of heirship is lacking, or if the heir dies before the testator, or repudiates the inheritance, without having a substitute, and there being no right of accretion.

4. When the heir designated is disqualified to succeed.

ART. 913. In the absence of testamentary heirs, the law gives the inheritance, according to the rules hereafter set forth, to the legitimate and natural relatives of the deceased, to the widower or widow, and to the State.

ART. 914. The provisions relating to disqualification to succeed by will are also applicable to intestate successions.

SECTION SECOND.—*Relationship.*

ART. 915. The nearness of relationship is determined by the number of generations. Each generation forms one degree.

ART. 916. A series of degrees forms the line, which may be direct or collateral.

A direct line is one constituted by a series of degrees among persons descending one from the other.

A collateral line is that constituted by a series of degrees among persons not descending one from the other, but proceeding from a common trunk.

ART. 917. The direct line is either descending or ascending.

The former joins the head of the family with those descending from him.

The latter joins a person with those from whom he descends.

ART. 918. In the lines as many degrees are counted as there are generations or persons, deducting the progenitor.

In the direct line the ascent is made only to the trunk. Thus the son is one degree removed from the father, two from the grandfather, and three from the great-grandfather.

In the collateral line, the ascent is made up to the common trunk, and then a descent to the person with whom the computation is made. Therefore the brother is two degrees removed from the brother, three from the uncle, brother of his father or mother, four from the first cousins, and so forth.

ART. 919. The computation referred to in the foregoing article governs in all matters, except in those which have relation to the obstacles to canonical marriage.

ART. 920. Whole blood relationship is the relation in the father's and mother's line at the same time.

ART. 921. In inheritances the relative nearest in degree excludes the most remote excepting the right of representation in proper cases.

Relatives who are in the same degree shall inherit in equal shares, with the exception of what is provided in article 949 with regard to whole blood relationships.

ART. 922. Should there be several relatives in the same degree and one or more of them should not wish to or could not succeed, his portion shall accrue to the others of the same degree, reserving the right of representation in a proper case.

ART. 923. If the inheritance is repudiated by the nearest relative should there be one only, or by all the nearest relatives, designated by law, should there be several, those of the following degree shall inherit in their own right, without being able to represent those repudiating the inheritance.

SECTION THIRD.—*Representation.*

ART. 924. The right which all the relatives of a person have to succeed him in all the rights which he would have if alive, or which he might have inherited, is called the right of representation.

ART. 925. The right of representation shall always take place in the direct descending line, but never in the ascending.

In the collateral line it shall take place only in favor of the children of brothers or sisters, whether they be of the whole or half blood.

ART. 926. Whenever the inheritance is taken by representation, the division of the estate shall be made *per stirpes;* thus the representative or representatives do not inherit any more than that which the person they represent would inherit if alive.

ART. 927. When children of one or more brothers or sisters of the deceased survive, they shall succeed the latter by representation, if uncles also survive. But if they alone survive they shall inherit in equal shares.

ART. 928. The right of representing a person is not lost by the renunciation of the inheritance.

ART. 929. A living person can not be represented except in cases of disinheritance or incapacity.

CHAPTER FOURTH.

Order of succession according to diversity of lines.

SECTION FIRST.—*Descending direct line.*

ART. 930. Succession pertains, in the first place, to the descending direct line.

ART. 931. Legitimate children and their descendants succeed the parents and other ascendants, without distinction of sex or age, even though they spring from different marriages.

ART. 932. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares.

ART. 933. The grandchildren and other descendants shall inherit by right of representation, and if one of them should die, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal parts.

ART. 934. Should any children and descendants of other deceased children survive, the former shall inherit in their own right, and the latter by right of representation.

SECTION SECOND.—*Ascending direct line.*

ART. 935. In the absence of legitimate children and descendants of the deceased, his ascendants shall inherit from him, to the exclusion of collaterals.

ART. 936. The father and mother, if living, shall inherit share and share alike.

Should one of them only survive, he or she shall succeed to the son's entire estate.

ART. 937. In the absence of father or mother the ascendants nearest in degree shall inherit.

Should there be several of equal degree belonging to the same line, they shall divide the inheritance *per capita;* should they be of different lines but of equal degree, one-half shall go to the paternal and the other half to the maternal ascendants. In each line the division shall be made *per capita.*

ART. 938. The provisions of the two preceding articles are understood without prejudice to what is prescribed in articles 811 and 812, which is applicable to intestate as well as testamentary successions.

SECTION THIRD.—*Acknowledged natural children.*

ART. 939. In the absence of legitimate descendants and ascendants, the natural children legally acknowledged, and those legitimized by royal concession, shall succeed to the entire estate of the deceased.

ART. 940. If, together with the natural or legitimized children, there should survive descendants of another deceased natural or legitimized child, the former shall succeed in their own right and the latter by right of representation.

ART. 941. The hereditary rights granted by the two preceding articles to a natural or legitimized child shall be transmitted upon its death to its descendants, who shall inherit by right of representation from their deceased grandparent.

ART. 942. In case legitimate descendants and ascendants survive, the natural and legitimized children shall receive from the inheritance only the portion granted them by articles 840 and 841.

ART. 943. A natural and legitimized child has no right to succeed *ab intestato* the legitimate children and relatives of the father or mother who has acknowledged it; nor shall such children or relatives inherit from the natural or legitimized child.

ART. 944. If the acknowledged natural or legitimized child should die without issue, either legitimate or acknowledged by it, the father or mother who acknowledged it shall succeed to its entire estate, and if both acknowledged it and are alive, they shall inherit from it share and share alike.

ART. 945. In the absence of natural ascendants the natural and legitimized children shall be succeeded by their natural brothers or sisters, according to the rules established for legitimate brothers or sisters.

SECTION FOURTH.—*Successions of collaterals and of spouses.*

ART. 946. In the absence of the persons included in the three preceding sections, the collateral relatives and the spouses shall inherit in the order established in the following articles.

ART. 947. Should there be only brothers or sisters of the whole blood, they shall inherit in equal shares.

ART. 948. Should brothers survive with nephews, children of brothers of the whole blood, the former shall inherit *per capita* and the latter *per stirpes.*

ART. 949. Should brothers of the whole blood survive with brothers of half blood, the former shall receive a share in the inheritance double that of the latter.

ART. 950. In case there are only brothers of half blood, some on the father's and some on the mother's side, all shall inherit equal shares without distinction of property.

ART. 951. Children of brothers of half blood shall succeed *per capita* or *per stirpes*, according to the rules established for brothers or sisters of the whole blood.

ART. 952. In the absence of brothers or sisters and of nephews, children of the same, be they or not of the whole blood, the surviving spouse, not separated by a final decree of divorce, shall succeed to the entire estate of the deceased.

ART. 953. Should there be brothers or sisters or children of brothers or sisters, the surviving widow or widower shall have a right to receive the part of the inheritance in usufruct assigned him or her in article 837.

ART. 954. Should there be neither brothers or sisters nor children of brothers or sisters nor a surviving spouse, the other collateral relatives shall succeed to the estate of the deceased.

The succession of the latter shall follow without distinction of lines or preference among them by reason of the whole blood.

ART. 955. The right to inherit *ab intestato* shall not extend beyond the sixth degree of relationship in the collateral line.

SECTION FIFTH.—*Succession by the State.*

ART. 956. In the absence of persons having a right to succeed in accordance with the provisions of the preceding sections, the State shall inherit, the property being destined to charitable institutions and those for gratuitous instruction, in the following order:

1. Municipal charitable institutions and free schools of the domicile of the deceased.
2. Those of either class in the province of the deceased.
3. Charitable and educational institutions of a general character.

ART. 957. The rights and obligations of charitable and educational institutions, in the case of the preceding articles, shall be the same as those of the other heirs.

ART. 958. In order that the State may take possession of the property of the inheritance, a previous judicial declaration of heirship must be made awarding the property to the same because of the absence of legitimate heirs.

CHAPTER FIFTH.

Provisions common to inheritance by or without will.

SECTION FIRST—*Precautions to be adopted when the widow remains pregnant.*

ART. 959. When the widow believes that she has been left pregnant, she must notify those having in the inheritance rights of such a character that they will disappear or be reduced by the birth of a posthumous child.

ART. 960. The persons interested, referred to in the preceding article, may request the municipal judge or the judge of first instance, when there is one, to order the proper precautions taken in order to prevent a supposititious parturition or to accept the child born as viable, when, in truth, it is not so.

The judge shall take care that the measures he orders taken shall not be offensive either to the modesty or to the liberty of the widow.

ART. 961. Whether the notice referred to in article 959 has been given or not, when the time of the parturition approaches, the widow must notify the persons interested thereof. The latter shall have a right to appoint a person in whom they have confidence in order that he may ascertain the fact of the delivery.

If the person appointed should be rejected by the widow, the judge shall appoint a physician or a woman.

ART. 962. The omission of these formalities shall not prejudice the legitimacy of the parturition, which, if impugned, may be proven by the mother or by the child legally represented.

The action to impugn on the part of those having such right shall prescribe after the periods fixed in art. 113.

ART. 963. When the husband has acknowledged in an instrument, either public or private, the fact of the pregnancy of his wife she shall be excused from giving the notice required by art. 959, but she must comply with the provisions of art. 961.

ART. 964. A widow who remains pregnant, even though she be rich, must be given support from the estate, taking into consideration the portion thereof which may pertain to the posthumous child, should it be born and be viable.

ART. 965. During the time intervening, until the parturition arrives, or until the fact is established that it will not take place, either on account of a miscarriage or because the maximum time for the gestation has passed, the security and administration of the property shall be provided for in the manner established for compulsory testamentary proceedings.

ART. 966. The division of the inheritance shall be suspended until the parturition or miscarriage takes place, or the lapse of time shows the widow was not pregnant.

However, an administrator may pay the creditors after a judicial mandate.

ART. 967. After the delivery or miscarriage has taken place, or after the period of gestation has elapsed, the administrator of the estate shall terminate his office and shall give an account of his management to the heirs or to their legal representatives.

SECTION SECOND.—*Property to be set apart.*

ART. 968. Besides the reservation imposed by art. 811, the widower or widow contracting a second marriage shall be obliged to set apart for the children and descendants of the former the ownership of all the property he may have acquired from the deceased spouse by will, by intestate succession, by gift, or for any other good consideration, but not his or her half of the conjugal profits.

ART. 969. The provision of the preceding article is applicable to property which has been acquired for the considerations mentioned therein, by the widower or widow from any of the children of the first

marriage, and to that received from the relatives of the deceased by reason of personal considerations for the same.

Art. 970. The obligation to set apart shall cease when the children of a marriage, of age and who may have a right to the estate, should expressly renounce it, or when things given or left by the children to their father or mother, with a knowledge that they had married a second time, are in question.

Art. 971. The reservation shall also cease if on the death of the father or mother who contracted a second marriage no legitimate children or descendants of the first marriage survive.

Art. 972. Notwithstanding the obligation to set apart, the father or mother, married a second time, may grant betterments in the property to be set apart to any of the children or descendants of the first marriage, in accordance with the provisions of article 823.

Art. 973. If the father or mother should not have made use in whole or in part of the right granted him or her in the foregoing article, the legitimate children and descendants of the first marriage shall succeed to the property to be set apart in accordance with the rules prescribed for succession in the descending line, even if, by virtue of a will, he or she should have unequally inherited from the first deceased spouse or should have renounced or repudiated his or her inheritance.

The child, justly disinherited by the father or by the mother, shall lose all right to the property set apart, but should it have legitimate children or descendants the provisions of article 857 shall be observed.

Art. 974. Alienations of real property to be set apart, made by the surviving spouse before contracting a second marriage, shall be valid with the obligation to secure, from the moment of said marriage, the value of the same to the children and descendants of the first marriage.

Art. 975. Alienations of real property to be set apart, which may have been made by the widower or widow after contracting a second marriage, shall be valid only if on his or her death no legitimate children or descendants of the first marriage survive, without prejudice to the provisions of the mortgage law.

Art. 976. Alienations of personal property, made before or after contracting a second marriage, shall be valid, always reserving the obligation to pay an indemnity.

Art. 977. A widower or widow, on contracting a new marriage, shall have an inventory made of all the property subject to be set apart, enter in the registry of property that such real estate is subject to be set apart in accordance with the provisions of the mortgage law and shall have the personal property appraised.

Art. 978. A widower or widow, on remarrying, is also bound to secure by a mortgage:

1. The restitution of the personal property, not alienated, in the condition in which it was at the time of the death of the deceased, should it be paraphernal, or arising from unappraised dowry; or its value, if arising from an appraised dowry.

2. The payment of the damages caused, or which may be caused by his or her fault or neglect.

3. The return of the sums which may have been received for the personal property alienated or the delivery of the value it had at the time of the alienation, if the latter should have been made for a good consideration.

4. The value of the real estate validly alienated.

ART. 979. The provisions of the preceding article for the case of a second marriage shall also be observed in third and subsequent marriages.

ART. 980. The obligation to set apart, imposed in the preceding articles, shall be applicable to the widower or widow, who, even though he or she does not contract a new marriage, may subsequently have an acknowledged natural child, or one judicially declared as such.

Said obligation shall be effective from the date of the birth of said child.

SECTION THIRD.—*The right of accretion.*

ART. 981. In legitimate successions the portion of the person who repudiated the inheritance shall always accrue to the coheirs.

ART. 982. In order that a testamentary succession in the right of accretion may take place it is necessary—

1. That two or more persons are designated to the same inheritance or to the same portion thereof without a special designation of shares.

2. That one of the persons designated dies before the testator or renounces the inheritance or is disqualified to receive it.

ART. 983. It shall be understood that a designation has been made by portion only in case the testator may have expressly assigned a share to each heir.

The phrase "one-half to each or in equal parts," or any other which, though designating an aliquot part, should not fix it numerically or in such manner as to make each of them the owner of an estate severally, does not exclude the right of accretion.

ART. 984. The heirs, to whom the inheritance accrues, shall succeed to all the rights and obligations which the one who did not wish or could not receive it would have had.

ART. 985. Among heirs by force of law the right of accretion shall take place only when the part which can be freely disposed of is left to two or more of them, or to any one of them, and to a stranger.

Should the part repudiated be the legal portion, the other coheirs shall succeed to it in their own right, and not by the right of accretion.

ART. 986. In testamentary successions, when the right of accretion is not proper, the rejected portion of the heir designated, for whom no substitute has been appointed, shall pass to the legal heirs of the testator who shall receive it with the same charges and obligations.

ART. 987. The right of accretion shall also be proper between the legatees and the usufructuaries in the manner established for heirs.

SECTION FOURTH.—*Acceptance and repudiation of the inheritance.*

ART. 988. Acceptance and repudiation of the inheritance are acts entirely voluntary and free.

ART. 989. The effects of the acceptance and repudiation shall always retroact to the moment of the death of the person whose property is inherited.

ART. 990. Acceptance or repudiation of the inheritance can not take place, either partially, for a certain period, nor conditionally.

ART. 991. No person can accept nor repudiate an inheritance, without being certain of the death of the person from whom he is to inherit and of his rights to the inheritance.

ART. 992. Any person having the free disposal of his property may accept or repudiate an inheritance.

An inheritance left to minors or incapacitated persons may be accepted in the manner prescribed in number 10 of article 269. Should the guardian accept by himself, the acceptance shall be considered as made under benefit of inventory.

The acceptance of an inheritance left to the poor shall pertain to the persons designated by the testator to classify and distribute the property, and, in their absence, to those mentioned in article 749, and it shall also be understood as accepted under benefit of inventory.

ART. 993. The legal representatives of associations, corporations, and institutions qualified to acquire may accept the inheritance left to the same; but in order to repudiate it they require judicial approval, after hearing the Department of Public Prosecution.

ART. 994. Public official establishments can neither accept nor repudiate inheritances without the approval of the Government.

ART. 995. A married woman can not accept nor repudiate an inheritance, except with the permission of her husband, or, in his absence, with the approval of the judge.

In the latter case, the property of the conjugal partnership already existing shall not be liable for the debts of the estate.

ART. 996. The deaf and dumb, who may know how to read and write, shall accept or repudiate the inheritance personally or through an attorney. Should they not be able to read or write, their guardian shall accept it under benefit of inventory, subject to the provisions of article 218 with regard to said disability.

ART. 997. The acceptance and repudiation of an inheritance once made are irrevocable, and cannot be impugned except when they are tainted from any of the defects which annul the consent, or when an unknown will appears.

ART. 998. Inheritances may be accepted purely and simply or under benefit of inventory.

ART. 999. Pure and simple acceptances may be express or implied.

An express acceptance is one made in a public or private instrument.

Implied acceptance is one made by acts which necessarily imply a wish to accept, or acts which no one should have a right to execute except in the capacity of an heir.

Acts of mere preservation, or provisional administration, do not imply the acceptance of the inheritance, if, at the same time, the title and character of heir have not been assumed.

ART. 1000. An inheritance is considered as accepted:

1. When the heir sells, gives, or assigns his right to a stranger, to all his coheirs, or to one of them.

2. When the heir renounces it, even gratuitously, for the benefit of one or more of his coheirs.

3. When he renounces it for a consideration in favor of all his coheirs indiscriminately, but if this renunciation should be gratuitous, and the coheirs, in whose favor it is made, are those to whom the portion renounced must accrue, the inheritance shall not be considered as accepted.

ART. 1001. Should the heir repudiate the inheritance to the prejudice of his own creditors, the latter may request the judge to authorize them to accept it in the name of the former.

The acceptance shall be of benefit to the creditors only in so far as it covers the amount of their credits. The excess, should there be any, shall not belong in any case to the renouncer, but shall be awarded to the persons to whom, according to the rules of this code, it may pertain.

ART. 1002. The heirs who have taken or concealed any property of the inheritance lose the right to renounce it and retain only the character of pure and simple heirs without prejudice to the penalties which they may have incurred.

ART. 1003. Through an acceptance, pure and simple, or without benefit of inventory, the heir shall be liable for all the charges on the estate, not only with the property of the same, but also with his own

ART. 1004. No action can be instituted against the heir to compel him to accept or repudiate it until nine days have elapsed from the death of the person whose inheritance is in question.

ART. 1005. Should a third person in interest institute a suit to compel the heir to accept or to repudiate the inheritance, the judge shall fix a period for the latter, not exceeding thirty days, within which he shall declare his intention, warning him that should he not do so the inheritance shall be considered as accepted.

ART. 1006. Upon the death of the heir, without having accepted or repudiated the inheritance, the rights he may have had are transmitted to his heirs.

ART. 1007. Should there be several heirs designated to an inheritance, some of them may accept and some repudiate it. Every one of the heirs shall enjoy the same liberty to accept it purely and simply, or under benefit of inventory.

ART. 1008. The repudiation of an inheritance shall be made in a public or authentic instrument, or in writing presented to the judge of competent jurisdiction in testamentary or intestate proceedings.

ART. 1009. Any person designated to an inheritance by a will and *ab intestato* and who repudiates it in the first capacity is considered as having repudiated in both characters.

Should he repudiate it as an intestate heir and without having knowledge of his testamentary character, he may yet accept it in the latter capacity.

SECTION FIFTH.—*Benefit of inventory and right to deliberate.*

ART. 1010. Every heir may accept an inheritance under benefit of inventory, even though the testator should have forbidden it.

He may also request the making of the inventory before accepting or repudiating the inheritance, in order to deliberate on this point.

ART. 1011. The acceptance of the inheritance, under the benefit of inventory, may be made before a notary or in a writing before any of the judges of competent jurisdiction in testamentary or intestate proceedings.

ART. 1012. Should the heir referred to in the preceding article be abroad, he may make said declaration before a diplomatic or consular agent of Spain, who may be authorized to discharge the duties of a notary in the place of the execution.

ART. 1013. The declaration referred to in the preceding articles shall not produce any effect whatsoever unless it be preceded or followed by a true and exact inventory of all the property of the estate, made with the formalities and within the periods fixed in the following articles.

ART. 1014. An heir who may have in his possession the property of the estate or a part thereof, and who may wish to make use of the benefit of inventory or of the right to deliberate, shall state this to the judge of competent jurisdiction in testamentary or intestate proceedings, within ten days following that on which he has become aware that he is such an heir, if he resides in the place where the deceased may have died. If he resides outside of it the period shall be thirty days.

In either case the heir must request, at the same time, the making of the inventory and the citation of the creditors and legatees in order that they may be present thereat if they wish to.

ART. 1015. If the heir should not have in his possession the inheritance or a part of it, or has not taken any steps as such heir, the periods fixed in the preceding article shall be counted from the day following that on which the period fixed by the judge for accepting or repudiating the inheritance expires, in accordance with article 1005, or from the day on which he may have accepted it or has acted as heir.

ART. 1016. With the exception of the cases referred to in the two preceding articles, if no action should have been brought against the heir, he may accept, under the benefit of inventory, or with the right to deliberate while the action to claim the inheritance does not prescribe.

ART. 1017. An inventory shall be begun within the thirty days following the citation of the creditors and legatees and shall be finished within sixty days more.

If, by reason of the property being situated at a long distance, or being very valuable, or for any other sufficient cause, said sixty days should appear insufficient, the judge may extend this period for such a time as he may deem necessary, which can not exceed one year.

ART. 1018. If by the fault or negligence of the heir the inventory is not begun or finished within the periods, and with the formalities prescribed in the preceding articles, it shall be understood that he accepts the inheritance purely and simply.

ART. 1019. An heir, who should have reserved to himself the right to deliberate, must state to the court, within thirty days, counted from the day following that on which the inventory has been concluded, whether he accepts or repudiates the inheritance.

If said thirty days have elapsed without said statement being made it shall be understood that he accepts it purely and simply.

ART. 1020. In any case the judge may, at the instance of an interested person, during the making of the inventory and until the acceptance of the inheritance, provide for the administration and custody of the inheritance, in accordance with the provisions of the law of civil procedure with regard to testamentary proceedings.

ART. 1021. A person who judicially claims an inheritance, which another has had in his possession for more than one year and who should win the suit, shall not be obliged to make an inventory in order to enjoy said benefit, and he shall be liable for the charges on the estate only with the property which may have been delivered to him.

ART. 1022. The inventory made by the heir, who afterwards repudiates the inheritance, shall benefit the substitutes and the intestate heirs, with regard to whom the thirty days for deliberation and in which to make the statement prescribed by article 1019 shall be counted from the day following that on which they received notice of the repudiation.

ART. 1023. The benefit of inventory produces the following effects in favor of the heir:

1. The heir shall not be bound to pay the debts and other charges on the inheritance except in so far as the property of the same may go.

2. He retains against the estate all the rights and actions which he may have had against the deceased.

3. His private property shall not be confused for any purpose whatsoever, to his injury, with the property belonging to the estate.

ART. 1024. The heir shall lose the benefit of inventory:

1. If having knowledge thereof he fails to include in the inventory any of the property, rights, or actions of the inheritance.

2. If before concluding the liquidation of the debts and legacies he should alienate any property of the estate without judicial authorization, or that of all the persons interested, or if he should not apply the value of what is sold in the manner specified at the time the authorization was granted him.

ART. 1025. During the making of the inventory and the period granted for deliberating the legatees can not demand the payment of their legacies.

ART. 1026. Until all the known creditors and the legatees have been paid, it shall be understood that the estate is under administration.

The administrator, whether it be the heir himself or any other person, shall have, as such, the representation of the estate to exercise all the actions pertaining thereto, and answer all complaints instituted against the same.

ART. 1027. The administrator can not pay the legacies until he has paid all the creditors.

ART. 1028. Should there be a pending suit among the creditors with regard to the preference of their credits, they shall be paid in the order and according to the degree fixed by the final judgment of graduation.

Should no suit be pending among the creditors, those presenting themselves first shall be paid first; but should it appear that one of the known credits is preferred, the payment shall not be made without previous security being given in favor of the creditor having a better right.

ART. 1029. If after the legacies are paid other creditors should appear, the latter shall have a right to make claims against the legatees only in case sufficient property should not remain to pay them.

ART. 1030. If for the payment of credits and legacies the sale of the hereditary estate should be necessary, it shall take place in the manner established by the law of civil procedure with regard to intestate and testamentary proceedings, unless all the heirs, creditors, and legatees come to a different agreement.

ART. 1031. If the hereditary estate should not be sufficient for the payment of the debts and legacies, the administrator shall render an account of his administration to the creditors and legatees who have not been paid in full, and he shall be liable for the damages caused the estate through his fault or negligence.

ART. 1032. After the creditors and legatees are paid, the heir shall have the full enjoyment of the remainder of the estate.

Should the estate have been administered by another person, he shall give an account of his administration to the heir, under the liability imposed by the preceding article.

ART. 1033. The cost of the inventory and the other expenses arising from the administration of the inheritance, accepted under the benefit of inventory, and the defense of its rights, shall be charged to the said estate. The costs which the heir may have been personally adjudged to pay by reason of his deceit or bad faith are excepted.

The same shall be understood with regard to the costs arising from making use of the right to deliberate, if the heir repudiates the inheritance.

ART. 1034. The private creditors of the heir can not interfere with the operations of the estate, accepted by the latter under benefit of inventory, until the creditors of the same and the legatees have been paid; but they may demand the retention or the attachment of the remainder which may be left the heir.

CHAPTER SIXTH.

Collation and division.

SECTION FIRST.—*Collation.*

ART. 1035. An heir by force of law surviving with others of the same character to a succession must bring into the hereditary estate the property or securities he may have received from the deceased during the life of the same, by way of dowry, gift, or for any good consideration, in order to compute it in fixing the legal portions and in the account of the division.

ART. 1036. Collation shall not take place among heirs by force of law if the donor should have so expressly ordered, or if the donee should repudiate the inheritance, excepting the case in which the gift is to be reduced by reason of illegality.

ART. 1037. What is left by will is not subject to collation, if the testator did not order otherwise, the legal portions in any case being reserved.

ART. 1038. When grandchildren inherit from their grandparents in representation of their parents, surviving with their uncles or cousins, they shall bring to collation all that their parents, if alive, would have been required to bring, even though they may not have inherited it.

They shall also bring to collation whatever they may have received from the testator during his life, unless the testator has disposed otherwise, in which case his will must be respected should it not prejudice the legal portion of the coheirs.

ART. 1039. Parents are not obliged to bring to collation in the inheritance of their ascendants what may have been bestowed as a gift by the latter to their children.

ART. 1040. Neither shall the gifts bestowed upon the spouse of the child be brought to collation, but should they have been made by the parent to both of them conjointly, the child shall be obliged to bring to collation one-half of the thing bestowed as a gift.

ART. 1041. Expenses for support, education, for sickness, even though they be extraordinary, apprenticeship, ordinary equipment, or usual presents are not subject to collation.

ART. 1042. Expenses which may have been incurred by the parents in giving their children a professional or artistic career shall not be

brought to collation unless the parent so orders or should they prejudice the legal portion; but when it is legal to bring them to collation the sum which the child would have spent, if it had lived in the house and company of its parents, shall be deducted therefrom.

ART. 1043. The amounts paid by a parent to redeem the children from the lot of soldiers, pay their debts, obtain for them a title of honor, or other similar expenses, shall be brought to collation.

ART. 1044. Wedding presents, consisting of jewels, clothing, and outfit, shall not be reduced as illegal except in so far as they exceed one-tenth or more of the sum which can be disposed of by will.

ART. 1045. The same things bestowed as a gift or given in dowry need not be brought to collation and division, but only the value they had at the time of the gift or dowry, even though they should not have been appraised at the time.

Their subsequent increase or impairment and even their total loss, either casually or culpably, shall be for the account and risk or for the benefit of the donee.

ART. 1046. A dowry or gift, made by both spouses, shall be brought to collation in equal parts in the inheritance of each one of them. That made by one alone shall be brought to collation in his or her inheritance.

ART. 1047. The donee shall receive from the funds of the inheritance an amount so much less than the sum he may already have received, the coheirs receiving the equivalent in property of the same nature, class, and quality, in so far as possible.

ART. 1048. If the provisions of the preceding article can not be executed, if the property bestowed as a gift consisted of real estate, the coheirs shall have a right to be equalized in cash, or in securities, at the rate at which they are quoted; and should there be in the inheritance neither cash nor securities which can be quoted, other property shall be sold at public auction in so far as necessary.

If the property bestowed as a gift is personal property, the coheirs shall have only a right to be equalized in other personal property of the inheritance at its just value at their option.

ART. 1049. The fruits of and interest on the property, subject to collation, are not due the funds of the inheritance, except from the day on which the succession is opened.

In order to regulate the same, the rents of and interest on the hereditary property of the same kind as that brought to collation shall be taken into consideration.

ART. 1050. If a question should arise among the coheirs as to the obligation to bring or with regard to the objects which are to be brought to collation, the division shall not be stopped for such reason when the proper security is given.

SECTION SECOND.—*Division.*

ART. 1051. No coheir can be obliged to continue in an undivided inheritance unless the testator should expressly forbid the division.

But even though forbidden, the division shall always be made for any of the causes by reason of which partnerships are dissolved.

ART. 1052. Every coheir having the free administration and disposal of his property may at any time request the division of the estate.

The legal representatives of incapacitated persons and absentees must request the division in their name.

ART. 1053. The wife can not ask for the division of property without the authority of the husband, or, in a proper case, of the judge. Should the husband request it in the name of his wife, he shall do so with her consent.

The coheirs of the wife can not request the division without the institution of a joint suit against her and her husband.

ART. 1054. The conditional heirs can not request the division until the condition is complied with. But the other coheirs may request it by properly securing the right of the former in case the condition is fulfilled; and until it is known that it has not been or can no longer be complied with, the division shall be considered as provisional.

ART. 1055. If, before making the division, one of the coheirs should die, leaving two or more heirs, it shall be sufficient for one of them to request it, but all those who intervene in such capacity shall appear under a single representation.

ART. 1056. If the testator should make a division of his property by an act *inter vivos* or by a last will, it shall be accepted in so far as it does not prejudice the legal portion of the heirs by force of law.

A father who, in the interest of his family, desires to keep an agricultural, industrial, or manufacturing enterprise undivided may make use of the privilege granted him by this article by providing that the legal portions of the other children be paid in cash.

ART. 1057. The testator may, by an act *inter vivos* or *causa mortis*, intrust the mere power of making the division after his death to any person who is not one of the coheirs.

The provisions of this and the foregoing articles shall be observed, even should there be a minor or a person subject to guardianship among the coheirs; but the trustee must in such case make an inventory of the property of the inheritance, citing the coheirs, the creditors, and the legatees.

ART. 1058. Should the testator not have made any division, nor entrusted this power to another, if the heirs should be of age and should have the free administration of their property, they may distribute the estate in the manner they may see fit.

ART. 1059. If the heirs of age should not agree as to the manner of making the division, they shall be free to enforce their rights in the manner prescribed in the law of civil procedure.

ART. 1060. If the minors should be subject to the parental authori and are represented in the division by the father or by the mother, a proper case, neither judicial intervention nor approval shall required.

ART. 1061. In the division of the estate all possible fairness shall observed by drawing lots or awarding to each one of the coheirs thi of the same nature, quality, or kind.

ART. 1062. If a thing should be individable or should become c siderably impaired by being divided, it may be awarded to one of heirs under condition of paying to the others the difference in cash.

But it shall be sufficient if a single one of the heirs requests its s at public auction, outside bidders being admitted in order that it n take place.

ART. 1063. On making the division, the coheirs shall reciproca compensate each other for the income and fruits each of them may ha received from the hereditary property for the useful and necess expenses made on said property or for the damage caused thereto malice or negligence.

ART. 1064. The costs of the division, made for the common intere of all the coheirs, shall be deducted from the estate; those made for t particular interest of one of them shall be defrayed by the same.

ART. 1065. The titles of acquisition or of ownership shall be delive to the coheir to whom the estate or estates to which they refer m have been awarded.

ART. 1066. When the same title includes several estates awarded several coheirs, or one only which may have been divided among t or more, the title shall remain in the possession of the person havi the largest interest in the estate or estates, and true copies ther shall be furnished the others at the expense of the estate. Should t interests be equal, the title shall be delivered to the male heir, a should there be more than one, to the eldest.

Should the title be an original one, the person in whose possessio remains shall furthermore be obliged to exhibit it to the other perso interested, when they request it.

ART. 1067. If any of the heirs should sell his hereditary rights t stranger before the division, all or any of the coheirs may subrog himself in the place of the purchaser, reimbursing him for the value the purchase, provided they do so within the period of a month, to counted from the time they were informed thereof.

SECTION THIRD.—*Effects of division.*

ART. 1068. A division legally made confers upon each heir the exc sive ownership of the property which may have been awarded to hi

ART. 1069. After the division has been made, the coheirs shall mutually bound to the surrender, and shall guarantee the proper awarded.

ART. 1070. The obligation referred to in the foregoing article shall cease in the following cases only:

1. Should the testator himself have made the division, unless it appears or may be reasonably presumed that he desired the contrary, and always reserving the legal portion.

2. Should it have been expressly stipulated on making the division.

3. Should the surrender arise from a cause subsequent to the division, or should it have been caused by the fault of the person to whom it was awarded.

ART. 1071. The mutual obligation of the coheirs to surrender is in proportion to their respective hereditary shares; but if any of them should be insolvent the other coheirs shall be liable for his part, in the same proportion, deducting the part pertaining to the one to be indemnified.

Those paying for the insolvent shall preserve their action against him until the time when his fortune may improve.

ART. 1072. If a credit should be awarded as recoverable, the coheirs shall not be liable for the subsequent insolvency of the debtor to the estate, and shall be liable only for his insolvency at the time the division is made.

No one shall be liable for the credits qualified as unrecoverable; but should they be collected, in whole or in part, the amount collected shall be distributed in the proper proportion among the heirs.

SECTION FOURTH—*Rescission of the division.*

ART. 1073. Divisions may be rescinded for the same causes as obligations.

ART. 1074. They may also be rescinded by reason of *lesion* exceeding the fourth part, taking into consideration the value of the things at the time they were awarded.

ART. 1075. The division made by the testator can not be impugned by reason of *lesion* excepting in the cases in which it may injure the legal portion of the heirs by force of law, or when it may appear, or it may be reasonably presumed, that the will of the testator was otherwise.

ART. 1076. A rescissory action by reason of *lesion* shall prescribe after four years, counting from the time the division was made.

ART. 1077. A defendant heir may choose between indemnifying for the damage or consent to a new division.

The indemnity may be paid in cash or in the same thing which suffered the damage.

If a new division is made it shall not include those who may not have been prejudiced, nor those who did not receive more than was proper.

ART. 1078. An heir who may have alienated the whole or a considerable part of the real property awarded to him can not institute the rescissory action by reason of *lesion*.

ART. 1079. The omission of one or more objects or securities of the inheritance does not give rise to the rescission of the division by rea-

son of *lesion*, but only to complete or increase the estate with the objects or securities omitted.

ART. 1080. A division, made with preterition of any of the heirs, shall not be rescinded unless it be proven that there was bad faith or deceit on the part of the other persons interested; but the latter shall be obliged to pay to the omitted person the proportionate share belonging to him.

ART. 1081. A division made with a person who was believed to be an heir without being so shall be void.

SECTION FIFTH.—*Payment of hereditary debts.*

ART. 1082. Creditors, recognized as such, may oppose the division of the inheritance until they are paid or the amount of their credits is secured.

ART. 1083. Creditors of one or more of the coheirs may take part, at their own expense, in the division in order to prevent it being made in fraud or to the prejudice of their rights.

ART. 1084. After the division has been made the creditors may demand the payment of their debts in full of any of the heirs who may not have accepted the inheritance under the benefit of inventory, or up to the amount of their hereditary share in case they have accepted it under such benefit.

In either case the defendant shall have a right to notify and summon his coheirs, unless, by disposition of the testator or by reason of the division, he alone should be bound to pay the debt.

ART. 1085. The coheir who shall have paid more than pertains to his share in the inheritance may demand his proportionate part of the others.

The same course shall be pursued if, by reason of the debt being secured by mortgage or consisting in a specified object, he should have paid it in full. The person to whom it has been awarded may, in such case, demand of his coheirs the proportional part only, even though the creditor should have transferred to him his actions and subrogated him in his place.

ART. 1086. Should any of the estates of the inheritance be charged with a perpetual income or real-property charge it shall not be extinguished, even when redeemable, unless a majority of the coheirs agree thereto.

Should this not be agreed to or should the charge not be redeemable, its value or principal shall be deducted from that of the estate, and the latter shall pass with the charge to the person to whom it may be allotted or awarded.

ART. 1087. The coheir, who at the same time should be a creditor of the deceased, may demand of the others the payment of his credit, deducting his proportional part as such heir, and without prejudice to the provisions of section fifth, chapter fifth, of this title.

BOOK FOURTH.

OBLIGATIONS AND CONTRACTS.

TITLE I.

Obligations.

CHAPTER FIRST.

General provisions.

ART. 1088. Every obligation consists in giving, doing, or not doing something.

ART. 1089. Obligations are created by law, by contracts, by quasi-contracts, and by illicit acts and omissions or by those in which any kind of fault or negligence occurs.

ART. 1090. Obligations arising from law are not presumed. Those expressly determined in this code or in special laws are the only demandable ones, and they shall be governed by the provisions of the laws which may have established them and by those of this book in regard to what has not been prescribed by said laws.

ART. 1091. Obligations arising from contracts have legal force between the contracting parties, and must be fulfilled in accordance with their stipulations.

ART. 1092. Civil obligations, arising from crimes or misdemeanors, shall be governed by the provisions of the penal code.

ART. 1093. Those arising from acts or omissions, in which faults or negligence, not punished by law, occur, shall be subject to the provisions of chapter second of title sixteen of this book.

CHAPTER SECOND.

Nature and effects of obligations.

ART. 1094. A person obliged to give something is also bound to preserve it with the diligence pertaining to a good father of a family.

ART. 1095. A creditor has a right to the fruits of a thing from the time the obligation to deliver it arises. However, he shall not acquire a property right thereto until it has been delivered to him.

ART. 1096. Should the thing to be delivered be a specified one the creditor, independently of the right granted him by article 1001, may compel the debtor to make the delivery.

Should the thing be undetermined or generic he may ask that the obligation be fulfilled at the expense of the debtor.

Should the person obligated be in default, or be bound to deliver the same thing to two or more different persons, he shall be liable therefor with regard to unforeseen events until the delivery is made.

ART. 1097. The obligation to give a specified thing includes that of delivering all of its accessories, even though they may not have been mentioned.

ART. 1098. If the person obliged to do something should not do it, it shall be ordered to be done at his expense.

This shall also be done should he act in contravention of the tenor of the obligation. Whatever has been badly done may also be ordered to be undone.

ART. 1099. The provisions of the second paragraph of the preceding article shall also be observed when the obligation consists in not doing and the debtor should do what he has been forbidden.

ART. 1100. Persons obliged to deliver or to do something are in default from the moment when the creditor demands the fulfillment of their obligation, judicially or extrajudicially.

However, the demand of the creditor, in order that default may exist, shall not be necessary—

1. If the obligation or law declares it expressly.

2. If by reason of its nature and circumstances it may appear that the fixing of the period within which the thing was to be delivered or the service rendered was a determinate cause to constitute the obligation.

In mutual obligations none of the persons bound shall incur default if the other does not fulfill or does not submit to properly fulfill what is incumbent upon him. From the time one of the persons obligated fulfills his obligation the default begins for the other party.

ART. 1101. Those who in fulfilling their obligations are guilty of fraud, negligence, or delay, and those who in any manner whatsoever act in contravention of the stipulations of the same, shall be subject to indemnify for the losses and damages caused thereby.

ART. 1102. Liability arising from fraud is demandable in all obligations. The renunciation of the action to enforce it is void.

ART. 1103. Liability arising from negligence is also demandable in the fulfillment of all kinds of obligations; but it may be mitigated by the court, according to the case.

ART. 1104. The fault or negligence of the debtor consists of the omission of the steps which may be required by the character of the obligation, and which may pertain to the circumstances of the persons, time, and place.

Should the obligation not state what conduct is to be observed in its fulfillment, that observed by a good father of a family shall be required.

ART. 1105. No one shall be liable for events which could not be foreseen, or which having been foreseen were inevitable, with the exception of the cases expressly mentioned in the law or those in which the obligation so declares.

ART. 1106. Indemnity for losses and damages includes not only the amount of the loss which may have been suffered, but also that of

the profit which the creditor may have failed to realize, reserving the provisions contained in the following articles.

ART. 1107. The losses and damages for which a debtor in good faith is liable, are those foreseen or which may have been foreseen, at the time of constituting the obligation, and which may be a necessary consequence of its nonfulfillment.

In case of fraud, the debtor shall be liable for all those which clearly may originate from the nonfulfillment of the obligation.

ART. 1108. Should the obligation consist in the payment of a sum of money, and the debtor should be in default, the indemnity for losses and damages, should there not be a stipulation to the contrary, shall consist in the payment of the interest agreed upon, and should there be no agreement, in that of the legal interest.

Until another rate is fixed by the Government, interest at the rate of 6 per cent per annum shall be considered as legal.

ART. 1109. Interest due shall earn legal interest from the time it is judicially demanded, even if the obligation should have been silent on this point.

In commercial transactions the provisions of the code of commerce shall be observed.

Pawn shops and savings banks shall be governed by their special regulations.

ART. 1110. A receipt from the creditor for the principal, without any stipulation regarding interest, extinguishes the obligation of the debtor with regard thereto.

The receipt for the last installment of a debt, when the creditor has made no reservation, shall also extinguish the obligation with regard to the previous installments.

ART. 1111. Creditors, after having attached the property of which the debtor may be in possession, in order to collect all that is due them, may exercise all the rights and actions of the latter for the same purpose, excepting those inherent in his person; they may also impugn the acts which the debtor may have performed in fraud of their right.

ART. 1112. All the rights acquired by virtue of an obligation are transmissible, subject to law, should there be no stipulation to the contrary.

CHAPTER THIRD.

Different kinds of obligations.

SECTION FIRST.—*Pure and conditional obligations.*

ART. 1113. Every obligation, the fulfillment of which should not depend upon a future or uncertain event or upon a past event, unknown to the parties in interest, shall be immediately demandable.

Every obligation, containing a condition subsequent, shall also be demandable without prejudice to the effect of the performance.

ART. 1114. In conditional obligations, the acquisition of rights, as well as the extinction or loss of those already acquired, shall depend upon the event constituting the condition.

ART. 1115. If the fulfillment of the condition should depend upon the exclusive will of the debtor, the conditional obligation shall be void. If it should depend upon chance or upon the will of a third person, the obligation shall produce all its effects in accordance with the provisions of this code.

ART. 1116. Impossible conditions, those contrary to morality, and those forbidden by law, shall annul the obligation depending upon them.

The condition of not doing a thing which is impossible is considered as not imposed.

ART. 1117. The condition that a certain event shall happen within a fixed period, shall extinguish the obligation from the time the period lapses or when there is no doubt that the event will not take place.

ART. 1118. The condition that a certain event shall not occur within a fixed period shall render the obligation binding from the time the period fixed elapses, or when it becomes evident that such event can not occur.

Should there not be a fixed period, the condition shall be considered as fulfilled within the time which would probably have been fixed, in view of the nature of the obligation.

ART. 1119. The condition shall be considered as fulfilled when the obligated party should voluntarily prevent its fulfillment.

ART. 1120. The effects of a conditional obligation to give after the condition has been fulfilled shall retroact to the day on which it was constituted. Nevertheless, if the obligation should impose mutual prestations on the parties concerned, the fruits and interest for the time during which the condition has been pending shall be understood as compensating each other. Should the obligation be unilateral, the debtor shall become the owner of the fruits and interest collected, unless by reason of the nature and circumstances of the obligation it must be inferred that the will of the person constituting it was otherwise.

In the obligations of doing or of not doing, the courts shall determine in each case the retroactive effect of the condition fulfilled.

ART. 1121. The creditor may, before fulfilling the conditions, enforce the actions which may be proper for the preservation of his right.

The debtor may recover what he may have paid during the same period.

ART. 1122. Should the conditions be established for the purpose of suspending the efficiency of the obligation to give, the following rules shall be observed in case the thing should improve, or be lost or impaired while the condition is pending:

1. If the thing was lost without fault of the debtor, the obligation shall be extinguished.

2. If the thing was lost by the fault of the debtor, he is obliged to make good the losses and damages.

It is understood the thing is lost when it perishes, becomes unsaleable, or disappears in such a manner that its existence is unknown, or it is not possible to recover it.

3. If the thing deteriorates without fault of the debtor, the deterioration shall be borne by the creditor.

4. If the thing should deteriorate by the fault of the debtor, the creditor may choose between the rescission of the obligation and its fulfillment, with indemnity for damages in both cases.

5. If the thing should improve by its nature or by time, the improvements accrue to the benefit of the creditor.

6. If it should improve at the expense of the debtor, the latter shall have no more rights than those granted a usufructuary.

ART. 1123. If the object of the conditions should be to rescind the obligation to give, after they are performed, the parties in interest shall mutually return all they may have received.

In cases of loss, deterioration or improvement of the thing, the provisions relating to debtors, contained in the preceding article, shall be applied to the person obliged to make restitution.

With regard to the obligations of doing or not doing, the provisions of the second paragraph of article 1120 shall be observed in so far as the effects of the rescission are concerned.

ART. 1124. The right to rescind the obligations is considered as implied in mutual ones, in case one of the obligated persons does not comply with what is incumbent upon him.

The person prejudiced may choose between exacting the fulfillment of the obligation or its rescission, with indemnity for damages and payment of interest in either case. He may also demand the rescission, even after having requested its fulfillment, should the latter appear impossible.

The court shall order the rescission demanded, unless there are sufficient causes authorizing it to fix a period.

This is understood without prejudice to the rights of third acquirers, in accordance with articles 1295 and 1298, and with the provisions of the mortgage law.

SECTION SECOND.—*Obligations with definite periods.*

ART. 1125. Obligations, the fulfillment of which has been fixed for a day certain, shall only be demandable when the proper day arrives.

A day certain is understood to be one which must necessarily arrive, even though its date be unknown.

If the uncertainty should consist in the arrival or nonarrival of the day, the obligation is conditional and shall be governed by the rules of the preceding section.

ART. 1126. In obligations with definite periods, what has been paid in advance can not be recovered.

If the person who paid was not aware when he did so of the existen of the period, he shall have a right to claim from the creditor t interest or fruits which the latter may have received from the thing.

ART. 1127. Whenever a period should be fixed in obligations, it presumed as established for the benefit of the creditor as well as of t debtor, unless from their tenor or from other circumstances it shou appear that it was established for the benefit of one or the other.

ART. 1128. Should the obligation not fix a period, but it can inferred from its nature and circumstances that there was an intenti to grant it to the debtor, the courts shall fix the duration of the san

The courts shall also fix the duration of the period when it may ha been left to the will of the debtor.

ART. 1129. The debtor shall lose all right to profit by the period—

1. If, after contracting the obligation, it should appear that he insolvent, unless he gives security for the debt.

2. If he does not give to the creditor the guaranties stipulated.

3. If by his own acts he should have reduced said guaranties af giving them, and if they disappear through an fortuitous event, unl they are immediately substituted by new ones equally safe.

ART. 1130. If the period of the obligation be fixed by days, to counted from a specified one, such day shall be excluded from the co putation, which must begin on the following one.

SECTION THIRD.—*Alternative obligations.*

ART. 1131. A person who is alternatively obliged to make differe prestations must fully comply with one of them.

A creditor can not be compelled to receive a part of one and a part another.

ART. 1132. The option pertains to the debtor unless it has be expressly granted the creditor.

A debtor shall not have the right to choose prestations which a impossible, illicit, or which could not have been the object of the oblig tion.

ART. 1133. The election shall be effective only from the time it w made known.

ART. 1134. A debtor shall lose the right of option when, of the pr tations which he is alternatively obliged to make, only one is feasibl

ART. 1135. A creditor shall have the right to indemnity for loss and damages when, by the fault of the debtor, all the things whi were alternatively the objects of the obligation should have diss peared, or it should have become impossible to fulfill the latter.

The indemnity shall be fixed, taking as a basis the value of the la thing which may have disappeared or of the last service which h become impossible.

ART. 1136. When an option has been expressly granted the credit the obligation shall cease to be alternative from the day on whi notice of said option may have been given to the debtor.

Until then the liability of the debtor shall be governed by the following rules:

1. If any of the things should have been lost by a fortuitous event, he shall perform by delivering the one which the creditor may select from among those remaining, or the one remaining if only one should exist.

2. If the loss of any of the things should have been caused by the fault of the debtor the creditor may claim any of those remaining or the value of the one which has disappeared by the fault of the debtor.

3. If all the things should have been lost by the fault of the debtor the creditor shall have a right to select the value of any one of them.

The same rules shall be applied to the obligations of doing or not doing, in case that any or all of the prestations should be impossible.

SECTION FOURTH.—*Several and joint obligations.*

ART. 1137. The concurrence of two or more creditors, or of two or more debtors in a single obligation, does not imply that each one of the former has a right to ask, nor that each one of the latter is bound to comply in full with the things which are the object of the same. This shall only take place when the obligation determines it expressly, being constituted as a joint obligation.

ART. 1138. If from the context of the obligations referred to in the preceding article any other thing does not appear the credit or the debt shall be presumed as divided in as many equal parts as there are creditors or debtors, being considered as credits or debts, each one different from the other.

ART. 1139. If the division should be impossible, the right of the creditors shall only be prejudiced by the collective acts of the same, and the debt shall only be recoverable by proceedings against all of the debtors. If any of the latter should be insolvent, the rest shall not be obliged to pay his share.

ART. 1140. Solidarity may exist, even though the creditors and debtors are not bound in the same manner, and for the same periods and under the same conditions.

ART. 1141. Each of the joint creditors may do whatever may be profitable to the others, but not what may be prejudicial.

The actions instituted against any one of the joint debtors shall prejudice all of them.

ART. 1142. A debtor may pay the debt to any one of the joint creditors; but should it have been sued by any one of them, he must make the payment to the latter.

ART. 1143. Novation, compensation, confusion, or remission of the debt, made by any of the joint creditors, or with any of the debtors of the same class, extinguishes the obligation without prejudice to the provisions of article 1146.

A creditor who may have executed any of these acts, as well as th person who collects the debt, shall be liable to the others for the pa pertaining to them in the obligation.

ART. 1144. A creditor may sue any of the joint debtors or all them simultaneously. The actions instituted against one shall not b an obstacle for those that may be brought subsequently against th others, as long as it does not appear that the debt has been collecte in full.

ART. 1145. The payment made by one of the joint debtors extin guishes the obligation.

The person who made the payment can only claim from his codebto the shares pertaining to each one with interest on the amounts advance

The nonfulfillment of the obligation by reason of the insolvency of joint debtor shall be made good by his codebtors in proportion to th debt of each of them.

ART. 1146. The waiver or remission made by the creditor of the pa affecting one of the joint debtors does not release the latter from h liability with regard to the codebtors in case the debt should hav been paid in full by any of them.

ART. 1147. If the thing should have perished, or the prestatio should have become impossible, without any fault of the joint debtor the obligation shall be extinguished.

If there should have been any fault on the part of any of them, a shall be liable with regard to the creditor for the value and th indemnity for damages and payment of interest, without prejudic to his action against the culpable or negligent person.

ART. 1148. A joint debtor may utilize, against the claims of the cre itor, all the exceptions arising from the nature of the obligation an those which are personal to him. Those personally pertaining to th others may be employed by him only with regard to the share of th debt for which the latter may be liable.

SECTION FIFTH.—*Divisible and indivisible obligations.*

ART. 1149. The divisibility or indivisibility of things, the object obligations, in which there is one debtor and one creditor, does n change nor modify the provisions of chapter second of this title.

ART. 1150. An indivisible several obligation is determined by inden nifying for losses and damages from the time any of the debtors fai to comply therewith. The debtors who may have been disposed to pe form their obligations shall only contribute to the indemnity a su equivalent to the corresponding portion of the value of the thing or the service of which the obligation may consist.

ART. 1151. For the purposes of the preceding articles the obligation to give specified things and all those which are not capable of parti fulfillment shall be considered as indivisible.

The obligations of doing shall be divisible when their purpose is the prestation of a number of days of work, the execution of works by units of measurement, or other similar things which by reason of their nature are capable of partial fulfillment.

In obligations of not doing the divisibility or indivisibility shall be decided by the character of the prestation in each particular case.

SECTION SIXTH.—*Obligations with a penal clause.*

ART. 1152. In obligations with a penal clause the penalty shall substitute indemnity for damages and the payment of interest in case of nonfulfillment, should there be no agreement to the contrary.

This penalty can only be enforced when it is demandable in accordance with the provisions of this code.

ART. 1153. The debtor can not exempt himself from the fulfillment of the obligation by paying the penalty, unless such right has been expressly reserved to him. Neither may the creditor exact the fulfillment of the obligation and also the payment of the penalty, unless such right has been clearly granted him.

ART. 1154. The judge shall equitably mitigate the penalty if the principal obligation should have been partly or irregularly fulfilled by the debtor.

ART. 1155. The nullity of the penal clause does not carry with it that of the principal obligation.

The nullity of the principal obligation carries with it that of the penal clause.

CHAPTER FOURTH.

Extinction of obligations.

GENERAL PROVISIONS.

ART. 1156. Obligations are extinguished—

By their payment or fulfillment.

By the loss of the thing due.

By the remission of the debt.

By the merging of the rights of the creditor and debtor.

By compensation.

By novation.

SECTION FIRST.—*Payment.*

ART. 1157. A debt shall not be considered as paid until the full amount of the thing has been delivered, or the prestation of which the obligation consisted has been made.

ART. 1158. Any person, whether he has an interest or not in the fulfillment of the obligation, and whether the debtor knows and approves it or is not aware thereof, can make the payment.

The person paying for the account of another may recover from the debtor what he may have paid, unless he has done it against his express will.

In such case he can only recover from the debtor in so far as th payment has been useful to him.

ART. 1159. A person paying in the name of the debtor, without th knowledge of the latter, can not compel the creditor to subrogate hi in his rights.

ART. 1160. In obligations to give, the payment made by a person no having the free disposal of the thing due, and capacity to convey i shall not be valid.

However, if the payment should have consisted in a sum of money o in a thing perishable, no action can be brought against the credito who may have spent or consumed it in good faith.

ART. 1161. In obligations of doing, the creditor can not be compelle to receive the prestation or the services from a third party, when th quality and circumstances of the person of the debtor should have bee taken into account in establishing the obligation.

ART. 1162. Payment must be made to the person in whose favor th obligation is constituted, or to another authorized to receive it in hi name.

ART. 1163. The payment made to a person who is incapacitated fro managing his property shall be valid in so far as it may have bee employed for his benefit.

A payment made to a third person shall also be valid in so far as i may have been beneficial to the creditor.

ART. 1164. A payment made in good faith to the person who is i possession of the credit shall release the debtor.

ART. 1165. A payment made by the debtor to the creditor after h has been judicially ordered to retain the debt shall not be valid.

ART. 1166. The debtor of a thing can not oblige his creditor t receive a different one, even though it should be of equal or greate value to that due.

Neither in obligations of doing can a prestation be substituted b another against the will of the creditor.

ART. 1167. If the obligation should consist in the delivery of a thing not specified or generic, the quality and circumstances of which shoul not have been expressed, the creditor can not exact one of a superio quality nor can the debtor deliver one of an inferior quality.

ART. 1168. Extrajudicial expenses arising from the payment shall b charged to the debtor. With regard to judicial expenses the court shall decide in accordance with the law of civil procedure.

ART. 1169. Unless the contract expressly authorizes it the creditor can not be compelled to partially receive the prestations of which the obligation consists.

However, should the debt be in part determined and in part unde termined, the creditor may exact and the debtor may make payment o the former without awaiting for the liquidation of the latter.

ART. 1170. Payments of debts of money shall be made in the specie stipulated and, should it not be possible to deliver the specie, in legal silver or gold coin current in Spain.

The delivery of promissory notes to order or drafts or other commercial paper shall only produce the effects of payment when collected or when, by the fault of the creditor, their value has been affected.

In the meantime the action arising from the original obligation shall be suspended.

ART. 1171. Payments shall be made at the place designated in the obligation.

Should it not have been designated, and when a determined thing is to be delivered, the payment shall be made at the place where the thing existed at the time of constituting the obligation.

In any other case the place of payment shall be that of the domicile of the debtor.

Application of payments.

ART. 1172. A person having several debts of the same kind in favor of a single creditor may declare, at the time of making a payment, to which of them it is to be applied.

If the debtor should accept a receipt from the creditor, setting forth the application of the payment, he can not make a claim against it, unless there should be some cause which may invalidate the contract.

ART. 1173. If the debt bears interest the payment can not be considered as made on account of the principal until the interest is covered.

ART. 1174. When the payment can not be applied according to the preceding rules the debt which is most onerous for the debtor among those which may be due shall be considered as the one paid.

If the latter should have the same nature and charges the payment shall be applied to all pro rata.

Payment by assignment of property.

ART. 1175. The debtor may assign his property to creditors in payment of his debts. This assignment releases the former from liability only to the net amount of the property assigned, unless there is an agreement to the contrary. Agreements entered into between the debtor and his creditors with regard to the effect of an assignment shall be made in accordance with the provisions of title seventeen of this book and with those of the Law of Civil Procedure.

Tender of payment and consignation.

ART. 1176. If the creditor to whom the tender of payment has been made should refuse to accept it, without reason, the debtor shall remain released from all liability by the consignation of the thing due.

The same effect shall be produced by the consignation alone when made in the absence of the creditor, or when the latter should be incapacitated to accept the payment when it is due, and when several persons claim to have a right to collect it, or when the instrument mentioning the obligation has been mislaid.

ART. 1177. In order that the consignation of the thing due may releas the obligee, notice thereof must previously be given to the person interested in the fulfillment of the obligation.

Consignation shall have no effect when not strictly in accordanc with the provisions governing payment.

ART. 1178. Consignation shall be made by depositing the things du at the disposal of the judicial authority before whom the tender sha be proven in a proper case and the notice of the consignation in othe cases.

After the consignation has been made the persons interested sha also be notified thereof.

ART. 1179. The expenses of the consignation, when proper, shall b charged to the creditor.

ART. 1180. After the consignation has been duly made the debto may request the judge to order the cancellation of the obligation.

Until the creditor may accept the consignation or a judicial decisio should be rendered that it was properly done, the debtor may withdra the thing or amount consigned, leaving the obligation in force.

ART. 1181. If, after the consignation has been made, the creditor should authorize the debtor to withdraw it, the former shall lose th preference he may have in the thing. The codebtors and sureties shal be released.

SECTION SECOND.—*Loss of the thing due.*

ART. 1182. An obligation, consisting in the delivery of a specified thing, shall be extinguished when said thing should be lost or destroyed without fault of the debtor and before he should be in default.

ART. 1183. Whenever the thing should be lost, when in the possession of the debtor, it shall be presumed that the loss occurred by his fault and not by a fortuitous event, unless there is proof to the contrary and without prejudice to the provisions of article 1096.

ART. 1184. In obligations to do, the debtor shall also be released when the prestation appears to be legally or physically impossible.

ART. 1185. When the debt for a certain and specified thing arises from a crime or misdemeanor the debtor shall not be exempted from the payment of its value, whatever the cause of the loss may have been, unless, having offered the thing to the person who should have received it, the latter should have refused to accept it without reason.

ART. 1186. After the obligation is extinguished by the loss of the thing, all the actions which the debtor may have against third persons, by reason thereof shall pertain to the creditor.

SECTION THIRD.—*Remission of debts.*

ART. 1187. A remission may be made either expressly or by implication.

Both shall be subject to the provisions governing illegal gifts. An express remission must, furthermore conform, to the forms of a gift.

ART. 1188. The surrender, made voluntarily by a creditor to his debtor, of a private instrument proving a credit, implies the renunciation of the action which the former had against the latter.

If in order to invalidate this renunciation, it should be claimed that it is illegal, the debtor and his heirs may support it by proving that the delivery of the instrument was made by virtue of the payment of the debt.

ART. 1189. Whenever the private instrument from which the debt appears should be in the possession of the debtor, it shall be presumed that the creditor delivered it of his own will, unless the contrary is proven.

ART. 1190. The remission of the principal debt shall extinguish the accessory obligations; but the remission of the latter shall leave the former in force.

ART. 1191. The accessory obligation of a pledge shall be considered as remitted, when the thing pledged, after having been delivered to the creditor, should be in the possession of the debtor.

SECTION FOURTH.—*Confusion of rights.*

ART. 1192. Whenever the characters of creditor and debtor are merged in the same person, the obligation is extinguished.

The case in which this confusion takes place by virtue of inheritance is excepted, if said inheritance should have been accepted under benefit of inventory.

ART. 1193. The confusion which takes place in the person of the debtor or of the principal creditor is beneficial to the sureties. That taking place in any of the latter does not extinguish the obligation.

ART. 1194. Confusion does not extinguish debts in severalty, except with regard to the part pertaining to the creditor or debtor in whom both characters are merged.

SECTION FIFTH.—*Compensation.*

ART. 1195. Compensation shall take place when two persons, in their own right, are mutually creditors and debtors of each other.

ART. 1196. In order that compensation may be proper, it is required:

1. That each of the persons bound should be so principally, and that he be at the same time the principal creditor of the other.

2. That both debts consist of a sum of money or, when the things due are perishable, that they be of the same kind and also of the same quality, if the latter should have been stipulated.

3. That both debts be due.

4. That they be determined and demandable.

5. That none of them is subject to any retention or suit instituted by a third person, and of which due notice has been given the debtor.

ART. 1197. Notwithstanding the provisions of the preceding article, the surety may oppose compensation with regard to what the creditor may owe his principal debtor.

ART. 1198. A debtor who may have consented to the assignment of rights made by a creditor in favor ot a third person, can not oppose, against the assignee, the compensation which should pertain to him against the assignor.

If the creditor gave him notice of the assignment and the debtor did not consent thereto, he may oppose compensation for prior debts, but not for subsequent ones.

If the assignment is made without knowledge of the debtor, he may oppose compensation for prior credits, and for subsequent ones, until he should have been informed of the assignment.

ART. 1199. Debts payable in different places may be compensated by an indemnity for the expenses of transportation or for the exchange at the place of payment.

ART. 1200. Compensation shall not be proper when any of the debts arise from a deposit, or from the obligations of the depositary or borrower.

Neither can it be set off to the creditor for support due by reason of a good consideration.

ART. 1201. When a person should have different debts, which may be compensated, the provisions relating to the imputation of payments shall be observed in the order of compensation.

ART. 1202. The effect of compensation is to extinguish both debts to the concurrent amount, even when the creditors and debtors have no knowledge thereof.

SECTION SIXTH.—*Novation.*

ART. 1203. Obligations may be modified—

1. By the change of their object or principal conditions.
2. By substituting the person of the debtor.
3. By subrogating a third person in the rights of the creditor.

ART. 1204. In order that an obligation may be extinguished by another which substitutes it, it is necessary that it should be so expressly declared, or that the old and new be incompatible in all points.

ART. 1205. Novation, consisting in the substitution of a debtor in the place of the original one, may be made without the knowledge of the latter, but not without the consent of the creditor.

ART. 1206. The insolvency of the new debtor, who may have been accepted by the creditor, shall not revive the action of the latter against the original debtor, unless said insolvency may have been prior, public, and known to the debtor when he transferred his debt.

ART. 1207. When the principal obligation is extinguished by reason of the novation, the accessory obligations shall only remain in force in so far as they benefit third persons who have not given their consent thereto.

ART. 1208. Novation is void if the original obligation is also so, unless the cause of nullity can be claimed by the debtor only, or the ratification gives validity to acts which were void in their origin.

ART. 1209. The subrogation of a third person in the rights of a creditor can not be presumed, except in the cases expressly mentioned in this code.

In other cases it shall be necessary to prove it clearly in order that it may be effective.

ART. 1210. Subrogation shall be presumed—

1. When a creditor pays another preferred creditor.

2. When a third person, who is not interested in the obligation, pays with the express or implied approval of the debtor.

3. When the person who is interested in the fulfillment of the obligation pays, without prejudice to the effects of the confusion with regard to the share pertaining to him.

ART. 1211. A debtor may make the subrogation without the consent of the creditor when, in order to pay the debt, he may have borrowed money in a public instrument, stating his purpose and setting forth in the receipt the origin of the sum paid.

ART. 1212. Subrogation transfers to the subrogated the credit, with the corresponding rights, either against the debtor or against third persons, be they sureties or holders of mortgages.

ART. 1213. A creditor to whom a partial payment has been made may exercise his right with regard to the balance, with preference to the person subrogated in his place by virtue of the partial payment of the said credit.

CHAPTER FIFTH.

Proof of obligations.

GENERAL PROVISIONS.

ART. 1214. Proof of obligations devolves upon the persons claiming their fulfillment, and that of their extinction upon those opposing it.

ART. 1215. Proofs may be given by instruments, by confession, by the personal inspection of a judge, by experts, by witnesses, and by presumptions.

SECTION FIRST.—*Public instruments.*

ART. 1216. Public instruments are those authenticated by a notary or by a competent public official, with the formalities required by law.

ART. 1217. Instruments in which a notary public takes part shall be governed by the notarial law.

ART. 1218. Public instruments are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

They shall also be evidence against the contracting parties and their legal representatives with regard to the declarations the former may have made therein.

ART. 1219. Public instruments, made for the purpose of impairing a former instrument, between the same parties, shall be effective against third parties only when the contents of the former should have been entered in the proper public registry or in the margin of the original instrument, and in that of the transcript or copy, by virtue of which the third person may have acted.

ART. 1220. Copies of public instruments of which there is an original or protocol, contested by those they prejudice, shall have force of proof only when they have been duly collated.

Should there be any difference between the original and the copy the contents of the former shall govern.

ART. 1221. Should the original instrument, the protocol, and the original record have disappeared, the following shall constitute evidence:

1. First copies made by the public official who authenticated them.

2. Subsequent copies issued by virtue of a judicial mandate, after citing the persons interested.

3. Those which, without a judicial mandate, may have been taken in the presence of the persons interested and with their consent.

In the absence of the said copies, any other copies, thirty or more years old, shall be evidence, provided they have been taken from the original by the official who authenticated them or by any other in charge of their custody.

Copies less than thirty years old, or which may be authenticated by a public official, in which the circumstances mentioned in the preceding paragraph do not concur, shall serve only as a basis of written evidence.

The force of proof of copies of a copy shall be weighed by the courts according to the circumstances.

ART. 1222. The entry in any public registry of an instrument which may have disappeared shall be weighed according to the rules established in the last two paragraphs of the preceding article.

ART. 1223. An instrument which is defective by reason of the incompetency of the notary or by reason of any other fault in its form shall be considered as a private instrument when signed by the parties who executed the same.

ART. 1224. An instrument acknowledging an agreement or contract proves nothing against the instrument containing the same if by excess or omission they disagree therewith, unless the novation of the former is expressly proven.

Private instruments.

ART. 1225. A private instrument legally acknowledged shall have, with regard to those who signed it and their legal representatives, the same force as a public instrument.

ART. 1226. A person against whom a written obligation, which appears signed by him, is set up in court is obliged to declare whether the signature is his or not.

The heirs or the legal representatives of the person obligated may limit themselves to state if they know whether the signature to the obligation is or is not that of their principal.

A refusal, without sufficient cause, to make the statement mentioned in the preceding paragraphs may be construed by the courts as an admission of the authenticity of the instrument.

ART. 1227. The date of a private instrument shall be considered, with regard to third persons, only from the date on which it may have been filed or entered in a public registry, from the death of any of those who signed it, or from the date on which it may have been delivered to a public official by virtue of his office.

ART. 1228. Entries, registries, and private papers shall be evidence against the person who has written them only in all that may appear clearly stated; but a person who wishes to make use thereof is bound to accept them also in the part prejudicial to him.

ART. 1229. A note written or signed by a creditor at the end, in the margin, or on the back of an instrument held by him constitutes evidence in all that may be favorable to the debtor.

The same shall be understood of a note written or signed by the creditor, on the back, in the margin, or at the foot of the duplicate of an instrument or receipt which the debtor may hold.

In either case the debtor who wishes to avail himself of what may be favorable to him shall have to abide by what is prejudicial.

ART. 1230. Private instruments executed for the purpose of changing the agreements made in a public instrument shall produce no effect against a third person.

SECTION SECOND.—*Confession.*

ART. 1231. Confession may be made either judicially or extrajudicially.

In either case it shall be an indispensable condition for the validity of the confession that it should relate to personal acts of the confessor and that he should have legal capacity to make it.

ART. 1232. Confession is evidence against the author.

Exception is made of the case in which compliance with the laws may be evaded by the same.

ART. 1233. The confession can not be partially used against him who makes it unless it should refer to different facts, or when a part of the confession is proven by other means, or when, in any particular, it should be contrary to nature or law.

ART. 1234. Confession loses its effectiveness only when it is proven that on making it an error of fact was committed.

ART. 1235. A judicial confession must be made under oath before a judge of competent jurisdiction, and when he who may be benefited by it has actual representation in the proceedings.

ART. 1236. When a judicial confession under decisory oath is requested, the party from whom it is demanded may ask that the oath

be referred to the adverse party, and should the latter refuse to take it, it shall be considered that the person has confessed.

ART. 1237. A decisory oath can not be demanded on incriminating facts nor on questions with regard to which the parties can not compromise.

ART. 1238. A confession made under decisory oath, whether deferred or referred, constitutes a proof only in favor or against the parties who submitted to it and their heirs or legal representatives.

No proof with regard to the falsity of said oath shall be admitted.

ART. 1239. Extrajudicial confession is considered as an act subject to the judgment of the courts, according to the rules established on evidence.

SECTION THIRD.—*Personal inspection by the judge.*

ART. 1240. Evidence by personal inspection by the judge shall only be effective in so far as it clearly permits the court to judge, by the external appearance of the thing inspected, of the fact which he desires to ascertain.

ART. 1241. The inspection made by a judge may be weighed in the sentence rendered by another judge, provided the former has set forth with perfect clearness in the proceedings the details and circumstances of the thing inspected.

SECTION FOURTH.—*Expert evidence.*

ART. 1242. This kind of evidence may only be made use of when, in order to weigh the facts, scientific, artistic, or practical knowledge is necessary or advisable.

ART. 1243. The value of this evidence and the form in which it is to be given are the subjects of the provisions of the law of civil procedure.

SECTION FIFTH.—*Evidence of witnesses.*

ART. 1244. Evidence of witnesses shall be admissible in all cases in which it should not have been expressly forbidden.

ART. 1245. All persons, of either sex, who are not disqualified by natural incapacity or by the provisions of law, may be witnesses.

ART. 1246. The following are disqualified by natural incapacity:

1. Lunatics or insane persons.

2. The blind and deaf, in those things a knowledge of which depends upon sight and hearing.

3. Minors under 14 years of age.

ART. 1247. The following are disqualified by provision of law:

1. Those directly interested in the suit.

2. The ascendants in the suits of their descendants and the latter in those of the former.

3. The father-in-law or mother-in-law in the suits of the son-in-law or daughter-in-law, and vice versa.

4. The husband in the suits of his wife and the wife in those of her husband.

5. Those who, by reason of their rank or profession, are bound to preserve secrecy in the matters relating to their profession or rank.

6. Those specially disqualified to be witnesses to certain instruments.

The provisions of Nos. 2, 3, and 4 are not applicable in suits in which it is intended to prove the birth or death of children, or any private family matter which it may not be possible to verify by other means.

ART. 1248. The force of proof of depositions of witnesses shall be weighed by the courts in accordance with the provisions of the law of civil procedure, taking care to avoid that, by the simple coincidence of some depositions, unless their truthfulness be evident, the affairs may be finally decided in which instruments, private documents, or any basis of written evidence are usually made use of.

SECTION SIXTH.—*Presumptions.*

ART. 1249. Presumptions are not admissible, except when the fact from which they are to be deduced is fully proven.

ART. 1250. Presumptions established by law exempt those favored thereby from producing any further proof.

ART. 1251. Presumptions established by law may be destroyed by proof to the contrary, except in the cases in which it is expressly prohibited.

Only a judgment obtained in a suit for revision shall be effective against the presumption of the truth of the *res adjudicata.*

ART. 1252. In order that the presumption of the *res adjudicata* may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such.

In questions relating to the civil status of persons, and in those regarding the validity or nullity of testamentary provisions, the presumption of the *res adjudicata* shall be valid against third persons, even if they should not have litigated.

It is understood that there is identity of persons whenever the litigants of the second suit are legal representatives of those who litigated in the preceding suit, or when they are jointly bound with them or by the relations established by the indivisibility of prestations among those having a right to demand them, or the obligation to satisfy the same.

ART. 1253. In order that presumptions not established by law may be admitted as means of evidence, it is indispensable that between the fact demonstrated and the one it is desired to deduce there should exist a precise and direct connection according to the rules of human judgment.

TITLE II.

Contracts.

CHAPTER FIRST.

General provisions.

ART. 1254. A contract exists from the moment one or more pers consent to bind himself or themselves, with regard to another or oth to give something or to render some service.

ART. 1255. The contracting parties may make the agreement establish the clauses and conditions which they may deem advisa provided they are not in contravention of law, morals, or public or

ART. 1256. The validity and fulfillment of contracts can not be to the will of one of the contracting parties.

ART. 1257. Contracts shall only be valid between the parties who cute them and their heirs, except, with regard to the latter, the cas which the rights and obligations arising from the contract are transmissible, either by their nature, or by agreement, or by provi of law.

Should the contract contain any stipulation in favor of a third son, he may demand its fulfillment, provided he has given notice of acceptance to the person bound before it may have been revoked.

ART. 1258. Contracts are perfected by mere consent, and from t time they are binding, not only with regard to the fulfillment of w has been expressly stipulated, but also with regard to all the co quences which, according to their character, are in accordance w good faith, use, and law.

ART. 1259. No one can contract in the name of another without be authorized by him or without having his legal representation accord to law.

A contract executed in the name of another by one who has neit his authorization nor legal representation shall be void, unles should be ratified by the person in whose name it was executed bef being revoked by the other contracting party.

ART. 1260. Oaths shall not be admitted in contracts. If admitt they shall be considered as not given.

CHAPTER SECOND.

Essential requisites for the validity of contracts.

GENERAL PROVISION.

ART. 1261. There is no contract unless the following requisites ex

1. The consent of the contracting parties.
2. A definite object which may be the subject of the contract.
3. The cause for the obligation which may be established.

SECTION FIRST.—*Consent.*

ART. 1262. Consent is shown by the concurrence of the offer and the acceptance of the thing and the cause which are to constitute the contract.

An acceptance made by letter does not bind the person making the offer, but from the time it came to his knowledge. The contract in such case is presumed as executed at the place where the offer was made.

ART. 1263. The following persons can not give consent:

1. Minors who are not emancipated.
2. Lunatics or the insane, and the deaf and dumb who do not know how to write.
3. Married women, in the cases specified by law.

ART. 1264. The incapacity, mentioned in the preceding article, is subject to the modifications which are determined by law and is understood without prejudice to the special disqualifications established by the same.

ART. 1265. Consent given by error, under violence, by intimidation, or deceit shall be void.

ART. 1266. In order that the error may invalidate the consent, it must refer to the substance of the thing, which may be the object of the contract, or to those conditions of the same, which should have been principally the cause of its execution.

An error with regard to the person shall invalidate a contract only when the consideration of the person should have been the principal cause of the same.

A mere error of account shall only give rise to its correction.

ART. 1267. Violence exists when, in order to exact the consent, irresistible force is used.

Intimidation exists when one of the contracting parties is inspired with a reasonable and well-grounded fear of suffering an imminent and serious injury to his person or property, or to the person or property of the spouse, descendants, or ascendants.

In order to classify the intimidation, the age, sex, and status of the person must be considered.

Fear of displeasing the persons to whom obedience and respect are due shall not annul the contract.

ART. 1268. Violence or intimidation shall annul the obligation, even if it should have been employed by a third person who did not take part in the contract.

ART. 1269. There is deceit when by words or insidious machinations on the part of one of the contracting parties the other is induced to execute a contract which without them he would not have made.

ART. 1270. In order that deceit may give rise to the nullity of a contract, it must be serious, and must not have been employed by both of the contracting parties.

Incidental deceit renders the party who employed it liable to in
nify for losses and damages only.

SECTION SECOND.—*Objects of contracts.*

ART. 1271. All things, even future ones, which are not out o
commerce of man, may be objects of contracts.

Nevertheless, no contract may be executed with regard to f
inheritances, except those the object of which is to make a div
inter vivos of the estate, according to article 1056.

All services not contrary to law or to good morals may also b
object of a contract.

ART. 1272. Things or services which are impossible can not b
object of a contract.

ART. 1273. The object of every contract must be a thing deter
with regard to its kind. The indetermination of the amount sha
be an obstacle to the existence of the contract, provided it m
possible to determine it without necessity of a new agreement bet
the contracting parties.

SECTION THIRD.—*Consideration of contracts.*

ART. 1274. In contracts, involving a valuable consideration, the
tation or promise of a thing or services by the other party is under
as a consideration for each contracting party; in remuneratory cont
the service or benefits remunerated, and in those of pure benefic
the mere liberality of the benefactor.

ART. 1275. Contracts without consideration or with an illicit one
no effect whatsoever. A consideration is illicit when it is contra
law and good morals.

ART. 1276. The statement of a false consideration in contracts
render them void, unless it be proven that they were based on an
real and licit one.

ART. 1277. Even though the consideration should not be expr
in the contract, it is presumed that it exists and that it is licit, u
the debtor proves the contrary.

CHAPTER THIRD.

Effectiveness of contracts.

ART. 1278. Contracts shall be binding, whatever may be the fo
which they may have been executed, provided the essential cond
required for their validity exist.

ART. 1279. Should the law require the execution of an instrume
other special formality in order to make the obligations of a co
binding, the contracting parties may compel each other to comply
said formalities from the moment in which consent and the other re
ments, necessary for their validity, have taken place.

ART. 1280. The following must appear in a public instrument:

1. Acts and contracts the object of which is the creation, transmission, modification, or extinction of property rights on real property.

2. Leases of the same property for six or more years, provided they are to the prejudice third persons.

3. Marriage contracts, and the creation and increase of dowries, whenever it is intended to enforce them against third persons.

4. The assignment, repudiation, and renunciation of hereditary rights or of those of the conjugal partnership.

5. The power to contract marriage, the general one for lawsuits, and the special ones to be presented in suits; the power to administer property and any other, the object of which is an act drafted or which is to be drafted in a public instrument, or which may prejudice a third person.

6. The assignment of actions or rights arising from an act contained in a public instrument.

All other contracts, in which the amount of the prestations of one of the two contracting parties exceeds 1,500 pesetas, must be reduced to writing, even though it be private.

CHAPTER FOURTH.

Interpretation of contracts.

ART. 1281. If the terms of a contract are clear and leave no doubt as to the intentions of the contracting parties, the literal sense of its stipulations shall be observed.

If the words should appear contrary to the evident intention of the contracting parties, the intention shall prevail.

ART. 1282. In order to judge as to the intention of the contracting parties, attention must principally be paid to their acts, contemporaneous and subsequent to the contract.

ART. 1283. However general the terms of the contract may be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract.

ART. 1284. If any stipulation of a contract should admit of different meanings, it should be understood in the sense most suitable to give it effect.

ART. 1285. The stipulations of a contract should be interpreted in relation to one another, giving to those that are doubtful the meaning which may appear from the consideration of all of them together.

ART. 1286. Words which may have different meanings shall be understood in that which may be most in accordance with the nature and object of the contract.

ART. 1287. The uses or customs of the country shall be taken into consideration in interpreting ambiguity in contracts, supplying in the same the omission of stipulations which are usually included.

ART. 1288. The interpretation of obscure stipulations of a contract must not favor the party occasioning the obscurity.

ART. 1289. When it should be absolutely impossible to decide the doubts by the rules established in the preceding articles, if they deal with incidental circumstances of the contract, and said contract involves a good consideration, they shall be decided in favor of the smallest transmission of rights and interests. Should the contract involve a valuable consideration, the doubt shall be decided in favor of the greatest reciprocity of interests.

Should the doubts, the decision of which is referred to in this article, involve the principal object of the contract so that the intention or will of the contracting parties can not be ascertained, the contract shall be void.

CHAPTER FIFTH.

Rescission of contracts.

ART. 1290. Contracts validly executed may be rescinded in the cases established by law.

ART. 1291. The following may be rescinded:

1. The contracts which may be executed by guardians without the authorization of the family council, provided the persons they represent have suffered *lesion* of more than one-fourth part of the value of the things which may have been the object thereof.

2. Those executed in representation of absentees, provided the latter have suffered the *lesion* referred to in the preceding number.

3. Those executed in fraud of creditors, when the latter can not recover, in any other manner, what is due them.

4. Contracts relating to things in litigation should they have been executed by the defendant without the knowledge and approval of the parties in litigation or of the competent judicial authority.

5. Any other contracts specially determined by law.

ART. 1292. Payments made, while in a state of insolvency, by a debtor on account of obligations, which at the time of making, the debtor could not be compelled to fulfill may also be rescinded.

ART. 1293. No contract shall be rescinded for *lesion*, excepting the cases mentioned in Nos. 1 and 2 of article 1291.

ART. 1294. The action for rescission is a subsidiary one; it may be enforced only when the person injured has no other legal remedy to obtain reparation for the injury.

ART. 1295. Rescission obliges the return of the things which were the objects of the contract, with their fruits and the sum with interest; therefore it can only be carried into effect when the person who may have claimed it can return that which, on his part, he is bound to do.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who have not acted in bad faith.

In such case the indemnity for damages may be claimed from the person who caused the *lesion.*

ART. 1296. The rescission, referred to in No. 2 of article 1291, shall not take place in contracts executed with judicial authorization.

ART. 1297. Contracts by virtue of which the debtor alienates property, for a good consideration, are presumed to be executed in fraud of creditors.

Alienations for valuable considerations, made by persons against whom a condemnatory judgment, in any instance, has been previously rendered, or a writ of seizure of property has been issued, shall also be presumed fraudulent.

ART. 1298. Any person who may have acquired in bad faith things alienated in fraud of creditors must indemnify the latter for the losses and damages caused to them by the alienation whenever, for any reason whatsoever, it should be impossible for him to return them.

ART. 1299. The action asking rescission must be brought within four years.

For persons subject to guardianship and for absentees, the four years shall not commence until the incapacity of the former has ceased to exist, or the domicile of the latter is known.

CHAPTER SIXTH.

Nullity of contracts.

ART. 1300. Contracts containing the requisites mentioned in article 1261 may be annulled, even when there should be no *lesion* to the contracting parties, whenever they contain any of the defects which invalidate them according to law.

ART. 1301. The action for nullity shall last four years.

This term shall commence to run:

In cases of intimidation or violence from the day on which it has ceased;

In those of error or deceit or falsity of consideration, from the date of the consummation of the contract;

When the purpose of the action is to invalidate contracts made by a married woman, without consent or competent authority, from the date of the dissolution of the marriage;

And when it refers to contracts executed by minors or incapacitated persons, from the date they were released from guardianship.

ART. 1302. The action for nullity of contracts may be brought by those who are principally or subsidiarily obligated by virtue thereof. Persons with capacity can not, however, allege the incapacity of those with whom they contracted; neither those who caused the intimidation or violence, or employed deceit, or caused the error, can base their action on these defects of the contract.

ART. 1303. When the nullity of an obligation has been declared, the contracting parties shall restore to each other the things which have

been the object of the contract with their fruits, and the value with its interest, without prejudice to the provisions contained in the following articles.

ART. 1304. When the nullity arises from the incapacity of one of the contracting parties, the incapacitated person is not obliged to make restitution, except to the extent he has profited by the thing or by the sum he may have received.

ART. 1305. When the nullity arises from the illegality of the consideration or the object of the contract, if the fact constitutes a crime or misdemeanor common to both contracting parties, they shall have no action against each other and proceedings shall be instituted against them, and, furthermore, the things or sum which may have been the object of the contract shall be applied as prescribed in the penal code with regard to the goods or instruments of the crime or misdemeanor.

This provision is applicable to the case in which there is a crime or misdemeanor on the part of only one of the contracting parties; but the one who is not guilty may recover what he may have given, and shall not be bound to fulfill what he may have promised.

ART. 1306. If the fact of which the illicit consideration consists does not constitute either a crime or misdemeanor, the following rules shall be observed:

1. When both parties are guilty, neither of them can recover what he may have given by virtue of the contract, nor claim the fulfillment of what the other party may have offered.

2. When only one of the contracting parties is guilty, he can not recover what he may have given by virtue of the contract, nor demand the fulfillment of what may have been offered him. The other party, who has had nothing to do with the illicit consideration, may reclaim what he may have given without being obliged to fulfill what he has offered.

ART. 1307. Whenever a person, who is obliged by a declaration of nullity to return a thing, can not return it because it has been lost, he must return the fruits collected and the value which the thing had when lost, with interest from the same date.

ART. 1308. While one of the contracting parties does not return that which he is obliged to deliver by virtue of the declaration of nullity, the other can not be compelled to fulfill, on his part, what is incumbent on him.

ART. 1309. The action of nullity is extinguished from the moment the contract may have been validly confirmed.

ART. 1310. Only contracts having all the requisites mentioned in article 1261 can be confirmed.

ART. 1311. The confirmation can be made either expressly or in an implied manner. It shall be understood that there is an implied confirmation when, being aware of the cause of the nullity and such cause having ceased to exist, the person who may have a right to invoke it

should execute an act which necessarily implies his wish to renounce such a right.

ART. 1312. Confirmation does not require the consent of the contracting parties who are not entitled to exercise the action of nullity.

ART. 1313. Confirmation purges the contract of all defects which it may have contained from the moment of its execution.

ART. 1314. The action for nullity of a contract shall also be extinguished when the thing which is the object thereof should be lost by fraud or fault of the person having a right to bring the action.

If the cause of the action should be the incapacity of any of the contracting parties, the loss of the thing shall be no obstacle for the action to prevail, unless it has occurred by fraud or fault on the part of the plaintiff after having acquired capacity.

TITLE III.

Contracts relating to property by reason of marriage.

CHAPTER FIRST.

General provisions.

ART. 1315. Persons who may be joined in matrimony may, before celebrating it, execute contracts, stipulating the conditions for the conjugal partnership with regard to present and future property, without any other limitations than those mentioned in this code.

In the absence of contracts relating to property it shall be understood that the marriage has been contracted under the system of legal conjugal partnership.

ART. 1316. In the contracts referred to in the preceding article the contracting parties can not stipulate anything contrary to law or morality, nor humiliating to the authority within the family pertaining respectively to the future spouses.

All stipulations not in accordance with the provisions of this article shall be considered void.

ART. 1317. There shall also be considered as void and as not written in the contracts mentioned in the two preceding articles the stipulations by which the contracting parties in a general manner stipulate that the property of the spouses shall be submitted to the local laws and customs of regions governed by the law of the forum and not to the general provisions of this code.

ART. 1318. A minor who can marry in accordance with law may also execute his marriage contract, but it shall be valid only when in its execution the persons designated by law to give consent to the minor to contract marriage take part therein.

In case the marriage contract should be void, because the concurrence and signature of the said persons are lacking and the marriage, however, is valid according to law, it shall be understood that the minor has contracted it under the system of conjugal partnership.

ART. 1319. In order that any change in the marriage contract be valid it must be made before the celebration of the marriage and in the presence and with the concurrence of the persons who took part in the contract as contracting parties. The attendance of the same witnesses shall not be necessary.

Any of the persons who attended the execution of the original contract can only be substituted by another, or his attendance may not be required when, by reason of death or any other legal reason, at the time of the execution of the new stipulation or the modification of the preceding one, attendance is impossible or should not be necessary according to law.

ART. 1320. After the marriage has been celebrated, the marriage contract executed prior thereto can not be changed, whether present or future property is involved.

ART. 1321. Marriage contracts and modifications made therein must be contained in a public instrument executed before the celebration of the marriage.

Property in the condition referred to in article 1324 is excepted from the preceding rule.

ART. 1322. Any modification which may be made in the marriage contract shall have no legal effect with regard to third persons if it does not include the following conditions:

1. That in the proper protocol, by a marginal note, reference be made to the notarial act or instrument containing the modification of the previous contract; and

2. That in case the original contract may be entered in the registry of property, the instrument by which it has been modified, be also entered.

The notary shall state these modifications in the authenticated copies of the stipulations or original contract he may issue, under the penalty of indemnifying the parties for losses and damages should he not do so.

ART. 1323. For the validity of a marriage contract, executed by a person against whom a sentence of civil interdiction or incapacity has been rendered, or against whom a suit for the same cause has been instituted, the attendance and consent of the guardian shall be indispensable, who for this purpose shall be appointed, by the proper persons, according to the provisions of this code and of the law of civil procedure.

ART. 1324. Whenever the property brought by the spouses is not real estate, and that of the husband and wife together does not exceed a total of two thousand five hundred pesetas, and there should be no notary in the town of their residence, the marriage contract may be executed before the secretary of the municipal council and two witnesses, who shall state, on their liability, that they know said property has been delivered or that it has been brought to the marriage, as the case may be.

The original contract or contracts shall be preserved in the registry in the archives of the proper municipality.

When, in the property brought to the marriage, whatever its value may be, there should be one or more estates, or the contracts relate to real property, they shall always be executed in a public instrument, before a notary, as prescribed in article 1321.

ART. 1325. Should the marriage be contracted in a foreign country, between a Spaniard and a foreign woman or between a foreigner and a Spanish woman, and the contracting parties should not state or stipulate anything with regard to their property, it shall be understood, when the husband is a Spaniard, that he marries under the system of the legal conjugal partnership, and when the wife is a Spaniard that she marries under the system of laws in force in the husband's country, all without prejudice to what is established in this code with regard to real property.

ART. 1326. All that is agreed to in the stipulations or contracts referred to in the preceding articles, in contemplation of a future marriage, shall be void and of no effect in case the marriage does not take place.

CHAPTER SECOND.

Gifts by reason of marriage.

ART. 1327. Gifts by reason of marriage are those bestowed before its celebration, in consideration of the same, and in favor of one or of both spouses.

ART. 1328. These gifts are governed by the rules established in title second, book third, in so far as they are not modified by the following articles.

ART. 1329. Minors may bestow and receive gifts in their antenuptial contracts, provided they are authorized by persons who must give their consent to contract marriage.

ART. 1330. Acceptance is not required for the validity of such gifts.

ART. 1331. Affianced persons may give each other in their marriage contract as much as the tenth part of their actual property, and with regard to future property in case of death, only a portion within the limit fixed by the provisions of this code relating to testate succession.

ART. 1332. The donor, by reason of marriage, must free the property bestowed as a gift from mortgages and any other charges thereon, except annuities (*censos*) and easements, unless in the marriage stipulations or contract the contrary may have been specified.

ART. 1333. A gift bestowed by reason of marriage may be revoked only in the following cases:

1. If it should be conditional and the condition should not be fulfilled.
2. If the marriage should not take place.
3. If the persons should marry without having obtained the consent in accordance with the provisions of rule 2, article 50, or when the marriage is annulled and there should exist bad faith on the part of one of the spouses, in accordance with No. 3, article 73 of this code.

ART. 1334. All gifts between spouses bestowed during the marriage shall be void.

Moderate gifts which spouses bestow on each other on festive days for the family are not included in this rule.

ART. 1335. All gifts bestowed during marriage by one of the spouses upon the children, whom the other spouse may have had by another marriage, or upon the persons of whom he or she is a presumptive heir, at the time of the gift, shall be void.

CHAPTER THIRD.

Dowry.

SECTION FIRST.—*The creation and guarantee of dowry.*

ART. 1336. A dowry is composed of the property and rights brought as such by the wife to the marriage at the time of contracting it, and of those which she acquires during the same by gift, inheritance, or legacy, as dowry property.

ART. 1337. Real property acquired during the marriage shall also be considered as dowry in the following cases:

1. When it is exchanged for other dowry property.
2. By right of redemption belonging to the wife.
3. By delivery in payment of the dowry.
4. By purchase with money belonging to the dowry.

ART. 1338. The parents and relatives of the spouses and the persons not belonging to the family may create the dowry in favor of the wife, either before or after the celebration of the marriage.

The husband may also create it before the marriage, but not after it.

ART. 1339. A dowry created before or at the time of the celebration of the marriage shall be governed in all that is not provided in this chapter by the rules for gifts made in consideration thereof. A dowry created after the marriage shall be governed by the rules for ordinary gifts.

ART. 1340. The father or the mother, or whichever one of them is alive, is bound to give a dowry to his or her legitimate daughters, except in the cases in which they should need their consent, according to law, to contract marriage and marry without obtaining it.

ART. 1341. The obligatory dowry referred to in the preceding article shall consist in a moiety of the presumptive rigorous legal portion. Should the daughter have property equivalent to the moiety of her legal portion, this obligation shall cease, and should the value of the property not cover the moiety of the legal portion, the donor shall supply the balance required to complete it.

In any case, it is prohibited to make investigations with regard to the fortune of the parents in order to determine the amount of the dowry, and the courts, in an act of voluntary jurisdiction, shall regulate it without any further investigation than the statements of the

parents who are to give the dowry and those of the two nearest male relatives of the daughter, who are of age, one of the paternal line and the other of the maternal, residing in the same place or within the judicial district.

In the absence of relatives of age, the courts shall decide, in the exercise of their discretion, by the statements of the parents only.

ART. 1342. The parents may comply with the obligation of giving dowries to their daughters, either by delivering to them the principal of the dowry or by paying them an annual income as fruits or interest thereof.

ART. 1343. When the husband alone or both spouses jointly create a dowry for their daughters, it shall be paid from the property of the conjugal partnership. Should there be no property, it shall be paid by moieties, or in the proportion in which the parents may have, respectively, bound themselves, with the property belonging to each spouse. If the wife alone should grant the dowry, what she has given or promised shall be taken from her own property.

ART. 1344. The dowry acknowledged by the husband, the delivery of which does not appear, or appears only in a private instrument, shall produce no other effect than that of a personal obligation.

ART. 1345. Notwithstanding the provisions of the foregoing article, the wife in whose favor an acknowledged dowry has been created by the husband before the celebration of the marriage, or within the first year thereof, may demand at any time that the said husband secure it by a mortgage, provided she judicially proves the existence of the dowry property or of other similar or equivalent property at the time she instituted her claim.

ART. 1346. Dowry may be either appraised or unappraised.

It shall be appraised, if the property of which it consists was appraised, at the time of the creation of the dowry, its ownership being transferred to the husband, who became obliged to return its value.

It shall be unappraised if the wife retains the ownership of the property, whether appraised or not, and the husband remains bound to return the same property.

If the marriage contract should not state the kind of dowry, it shall be considered as unappraised.

ART. 1347. The increase or the reduction of the appraised dowry shall be for the account of the husband, who shall remain bound only to return the value at which he received it and to guarantee the rights of the wife in the manner prescribed in the following articles.

ART. 1348. If the husband who may have received the appraised dowry believes himself prejudiced by its appraisal, he may request that the error or injury be remedied.

ART. 1349. The husband is bound:

1. To record in his name and to mortgage in favor of his wife the real property and property rights which he received by way of appraised dowry, or other sufficient ones to secure the appraised value thereof.

2. To secure with a sufficient special mortgage all other property which may have been delivered to him by way of appraised dowry.

ART. 1350. The sum which must be secured by reason of the appraised dowry shall not exceed the amount of the valuation, and if that of said dowry be reduced, the mortgage shall be reduced in the same proportion.

ART. 1351. The mortgage created by the husband in favor of the wife shall secure the restitution of the property or its appraised value in the cases in which this must take place according to law and with the limitations therein specified, and it shall become of no effect and may be canceled when, for any legal cause whatsoever, the husband may be exempted from the obligation of making the restitution.

ART. 1352. A married woman of age may herself demand the creation of the mortgage and the record of property referred to in article 1349.

Should she not as yet have celebrated the marriage, or if, having celebrated it, she be a minor, said right must be enforced in her name, and the determination of the sufficiency of the mortgage which is created shall be passed upon by the father, the mother, or the person who may have given the dowry or the property to be secured.

In the absence of these persons, and when the woman is a minor, married or not, the guardian, the *protutor*, family council, or any of its members, shall require that the same rights be enforced.

ART. 1353. If the guardian, *protutor*, or the family council do not demand the creation of the mortgage, the *fiscal* shall officially, or at the instance of any other person, demand that the husband be compelled to execute the same.

Municipal judges shall also be obliged to insist that the department of public prosecution shall comply with the provisions of the preceding paragraph.

ART. 1354. Should the husband have no property of his own upon which to create the mortgage referred to in article 1349, he shall remain bound to create it on the first real estate or property rights he may acquire.

ART. 1355. Whenever all or a part of the property which constitutes an appraised dowry should consist of public securities or bonds which can be quoted, and as long as their value is not secured by the mortgage which the husband is bound to create, the titles, records, or documents representing it shall be deposited, in the name of the wife and with the knowledge of the husband, in any of the public institutions designated for that purpose.

ART. 1356. In cases in which the husband should be obliged to secure with a mortgage personal property belonging to an unappraised dowry, the provisions of articles 1349 to 1355, relating to appraised dowries, shall be applicable.

SECTION SECOND.—*Administration and usufruct of the dowry.*

ART. 1357. The husband is the administrator and usufructuary of the property which may constitute the unappraised dowry, with the rights and obligations pertaining to the administration and the usufruct, reserving the modifications mentioned in the following articles:

ART. 1358. The husband is not bound to give the security required of ordinary usufructuaries; but he is obliged to enter in the registry, if not already recorded, in the name of the wife and as unappraised dowry, all the real property and property rights which he may receive as such, and to create a special sufficient mortgage as security for his administration, usufruct, and restitution of the personal property.

ART. 1359. Notwithstanding the provisions of the two preceding articles, the husband who should receive securities which can be quoted, or perishable property, by way of appraised or unapprasied dowry, and should not have secured them with a mortgage, may, nevertheless, substitute them with other equivalent ones with the consent of the wife, should she be of age, or of the persons referred to in article 1352, should she be a minor.

He may also alienate said property with the consent of the wife, and, in a proper case, with that of the aforesaid persons, on the condition that its value be invested in other property, securities, or rights equally safe.

ART. 1360. The wife retains the ownership of the property constituting the unappraised dowry, and, consequently, any increase or decrease it may have shall also belong to her.

The husband is only liable for the deterioration which such property may suffer by his fault or negligence.

ART. 1361. The wife may alienate, incumber, or mortgage the property of the unappraised dowry, should she be of age, with the permission of the husband, and, should she be a minor, with judicial authority and with the intervention of the persons mentioned in article 1352.

Should she alienate said property, the husband shall be bound to create a mortgage, in the same manner and under the same conditions as with regard to the property of the appraised dowry.

ART. 1362. The property of the unappraised dowry shall be liable for the usual daily expenses of the family, incurred by the wife, or by her order with the tacit consent of the husband, but in this case application shall first be made of the property belonging to the conjugal partnership, and then of that belonging to the husband.

ART. 1363. The husband can not, without the consent of the wife, lease for longer than six years real property of the unappraised dowry.

In any case, the advance of income or rentals made to the husband for more than three years shall be considered void.

ART. 1364. If the spouses, by virtue of the provisions o
1315, should have stipulated that conjugal partnership shall
between them, without stating the rules by which their prope
be governed, or should the wife or her heirs renounce said par
the provisions of this chapter shall be observed, and the hu
compliance with the obligations stated therein, shall receive
fruits which would be considered as earnings of the partne
case of its existence.

SECTION THIRD.—*Restitution of dowry.*

ART. 1365. The dowry shall be returned to the wife or to he
the following cases:

1. Should the marriage be dissolved or declared void.

2. Should the administration of the dowry be transferred to
in the case prescribed in the second paragraph of article 225.

3. Should the courts order it in accordance with the provi
this code.

ART. 1366. The restitution of an appraised dowry shall be
the husband or his heirs delivering to the wife or to her heirs t
at which it was appraised when the husband received the sam

From the value shall be deducted:

1. The dowry created in favor of the daughters, in so far as i
charged against the private property of the wife, in accorda
article 1343.

2. The debts contracted by the wife before the marriage an
the husband may have paid.

ART. 1367. The real property of the unappraised dowry
restored in the condition in which it may be; and should it ha
alienated, the proceeds of the sale shall be delivered, deducti
may have been applied to the payment of the exclusive obliga
the wife.

ART. 1368. The payment of the expenses and the improv
made by the husband in the unappraised dowry property, shall
erned by the provisions relating to the possessor in good faith.

ART. 1369. After the marriage has been dissolved or declar
the husband or his heirs may be compelled to the immediate res
of the real and personal property of the unappraised dowry.

ART. 1370. Until one year, to be counted from the dissolutio
marriage, has elapsed, neither the husband nor his heirs
required to return the money, the perishable property and pub
rities which do not exist totally or in part upon the dissolutio
conjugal partnership.

ART. 1371. The husband or his heirs shall pay to the wife o
heirs, from the date of the dissolution of the marriage until the
tion of the dowry, the legal interest on what they must pay i
on the amount of the perishable property and what may be ea

he public securities or credits in the meantime, according to their con-
ition or character, without prejudice to the provisions of article 1379.

ART. 1372. In the absence of an agreement between the persons
nterested, or of an express stipulation in the marriage contract, the
ssets of unappraised dowry, or the part thereof which may not be
estored in the same property which may have constituted the dowry,
r in that which may have substituted the same, shall be restored and
aid in money.

From this rule is excepted the restitution of the value of personal
lowry property which may not exist and which may be paid with other
ersonal property of the same kind, should there be any, in the conjugal
artnership.

The restitution of unappraised perishable property shall be made
vith an equal amount of property of the same kind.

ART. 1373. In the same manner as designated in the preceding
rticle there shall be restored the part of the dowry assets consisting—

1. Of marriage gifts legally bestowed by the husband upon the wife
to take effect after his death, excepting the provisions with regard to
the spouse who may have acted in bad faith in the case of the annul-
ment of the marriage, and in that of article 1440.

2. Of indemnities which the husband may owe his wife in accordance
with this code.

ART. 1374. The conjugal couch, with whatever constitutes it, and the
clothing and dresses for ordinary use of the widow shall be delivered
to her without being charged to her dowry.

ART. 1375. The credits or rights brought to the marriage by way of
unappraised dowry, or assigned with this character, shall be delivered
in the condition in which they are at the time of the dissolution of the
marriage, unless through negligence of the husband said credits may
not have been collected or may have become unrecoverable, in which
case the wife and her heirs shall have a right to demand their value.

ART. 1376. When two or more dowries are to be restored at the
same time, each of them shall be paid with the property which may
exist and originally belonged to them, respectively, and in their absence,
if the estate inventoried should not be sufficient to cover both of them,
their payment shall be effected according to priority of time.

ART. 1377. For the liquidation and restitution of the unappraised
dowry, the following items shall be deducted should they have been
paid by the husband:

1. The amount of the judicial costs and expenses incurred in the col-
lection and defense of the dowry.

2. The debts and obligations inherent to or affected by the dowry,
which in accordance with the marriage contract or with the provisions
of this code should not be chargeable to the conjugal partnership.

3. The sums for which the wife may be specially liable, in accordance
with the provisions of this code.

ART. 1378. At the time of the restitution of the dowry, the marriage gifts legally bestowed on the husband by his wife shall be paid to him without prejudice to the provisions of this code for the case of separation of property, or that of annullment of the marriage in which bad faith may have existed on the part of one of the spouses.

ART. 1379. Should the marriage be dissolved by the death of the wife, the interest or fruits of the dowry to be restored shall run in favor of the heirs from the day of the dissolution of the marriage.

Should the marriage be dissolved by the death of the husband, the wife may choose between demanding the interest and fruits of the dowry for one year or that support be given her from the estate of the inheritance of the husband. In any case, the widow shall receive from the funds of the inheritance the value of the mourning apparel.

ART. 1380. After the marriage has been dissolved, the pending fruits or rents shall be divided pro rata among the surviving spouse and the heirs of the deceased in accordance with the rules established for a case in which the usufruct ceases.

CHAPTER FOURTH.

Paraphernal property.

ART. 1381. Paraphernal property is that which the wife brings to the marriage without being included in the dowry and that she may acquire after the creation of the same without being added thereto.

ART. 1382. The wife retains the ownership of the paraphernal property.

ART. 1383. The husband can not institute actions of any kind whatsoever with regard to the paraphernal property without the intervention or consent of the wife.

ART. 1384. The wife shall have the management of the paraphernal property unless she has delivered the same to her husband, before a notary, in order that he may administer said property.

In such case the husband is obliged to create a mortgage for the value of the personal property he may receive, or to secure said property, in the manner established for dowry property.

ART. 1385. The fruits of the paraphernal property form a part of the assets of the conjugal partnership, and are liable for the payment of the marriage expenses.

The property itself also shall be liable, in the case of article 1362, provided that of the husband and the dowry property should be insufficient to cover the liabilities referred to therein.

ART. 1386. The personal obligations of the husband can not be paid out of the fruits of the paraphernal property unless it be proven that they were incurred for the benefit of the family.

ART. 1387. The wife can not alienate, encumber, or mortgage the paraphernal property without the permission of the husband, nor appear in court to litigate with regard to the same, unless she has been judicially authorized for the purpose.

ART. 1388. When the paraphernal property, the administration of which is reserved by the wife, should consist in money or public securities or valuable personal property, the husband shall have a right to demand that said property be deposited or invested in such manner that the alienation or pledge of the same would be impossible without his consent.

ART. 1389. The husband, to whom the paraphernal properly may have been delivered, shall be subject, with regard to the management of the same, to the rules established with regard to the property of the unappraised dowry.

ART. 1390. The alienation of the paraphernal property entitles the wife to demand the creation of a mortgage for the amount the husband may have received. The husband as well as the wife, in a proper case, may exercise, with regard to the proceeds of the sale, the right granted them by articles 1384 and 1388.

ART. 1391. The return of the paraphernal property, the administration of which has been turned over to the husband, shall take place in the same cases and in the same manner as that of the unappraised dowry property.

CHAPTER FIFTH.

Conjugal partnership.

SECTION FIRST —*General provisions.*

ART. 1392. By virtue of the conjugal partnership the earnings or profits indiscriminately obtained by either of the spouses during the marriage shall belong to the husband and the wife, share and share alike, upon the dissolution of the marriage.

ART. 1393. The conjugal partnership shall always begin on the same day that the marriage is celebrated. Any stipulation to the contrary shall be void.

ART. 1394. This partnership can not be renounced during the marriage, except in case of judicial separation.

When the renunciation should take place by reason of a separation, or after the marriage has been dissolved or annulled, said renunciation shall be included in a public instrument, and the creditors shall have the right granted them in article 1001.

ART. 1395. The conjugal partnership shall be governed by the rules of articles of partnership in all that does not conflict with the express provisions of this chapter.

SECTION SECOND.—*Property belonging to each of the spouses.*

ART. 1396. The following is the separate property of each of the spouses:

1. That brought to the marriage as his or her own.
2. That acquired for a good consideration by either of them during the marriage.

3. That acquired by right of redemption or by exchange
property belonging to one of the spouses only.

4. That bought with money belonging exclusively to the
the husband.

ART. 1397. A person giving or promising capital to the
shall not be subject to eviction, except in case of fraud.

ART. 1398. Property bestowed as a gift or left by will join
spouses and with a designation of specified shares shall
dowry to the wife and as capital to the husband in the p
fixed by the donor or testator; and, in the absence of said des
share and share alike, without prejudice to the provisions of a

ART. 1399. Should the gifts be bestowed for a valuable c
tion, the amount of the charges shall be deducted from the
from the capital of the spouse who bestows them, provided t
been borne by the conjugal partnership.

ART. 1400. In case that any credit, payable within a certai
of years, or a pension for life belongs to either of the spouses
visions of articles 1402 and 1403 shall be observed in order
mine what constitutes the dowry and what forms the capit
husband.

SECTION THIRD.—*Property of the conjugal partnership*

ART. 1401. To the conjugal partnership belong:

1. Property acquired for a valuable consideration during
riage at the expense of the partnership property, whether the
tion is made for the partnership or for one of the spouses only

2. That obtained by the industry, salaries, or work of the sp
of either of them.

3. The fruits, income, or interest collected or accrued during
riage, coming from the partnership property, or from that which
to either one of the spouses.

ART. 1402. Whenever a sum or credit, payable in a certain
of years, belongs to one of the spouses, the sums collected fo
ments due during the marriage shall not be partnership prope
shall be considered as capital of the husband or of the wife,
ing to whom the credit belongs.

ART. 1403. The right to a usufruct or pension, belonging t
the spouses, either in perpetuity or for life, shall form part of hi
own property; but the fruits, pensions, and interest due, du
marriage, shall be partnership property.

In this provision is included the usufruct which the spouses
the property of their children, even though they be of anoth
riage.

ART. 1404. The useful expenses made on behalf of the priva
erty of either one of the spouses through advances made by the
ship or by the industry of husband or wife are partnership pro

Buildings constructed during the marriage, on land belonging to one of the spouses shall also belong to the partnership, but the value of the land shall be paid to the spouse owning the same.

ART. 1405. Whenever the dowry or the capital belonging to the husband should consist, in whole or in part, of cattle existing at the time of the dissolution of the partnership, the heads of cattle exceeding the number which were brought to the marriage, shall be considered as partnership property.

ART. 1406. The earnings obtained by the husband or wife by gambling, or proceeding from other causes exempted from restitution, shall belong to the conjugal partnership, without prejudice in a proper case, to the provisions of the penal code.

ART. 1407. All the property of the marriage shall be considered as partnership property until it is proven that it belongs exclusively to the husband or to the wife.

SECTION FOURTH.—*Charges and obligations of the conjugal partnership.*

ART. 1408. The conjugal partnership shall be liable for:

1. All the debts and obligations contracted during the marriage by the husband, and also for those contracted by the wife in the cases in which she can legally bind the partnership.

2. The arrears or interest, matured during the marriage, of obligations which affect the private property of the spouses as well as the partnership property.

3. The minor repairs or of mere preservation, made during the marriage, to the private property of the husband or the wife. Extensive repairs shall not be chargeable to the partnership.

4. Extensive or minor repairs to the property of the partnership.

5. The support of the family and the education of the children in common, and of the legitimate children of one of the spouses only.

ART. 1409. The conjugal partnership shall also bear the amount of what has been bestowed as a gift or promised to the children in common by the husband, only for their establishment or for a profession, or by both spouses by common consent, should they not have agreed that it should be paid in whole or in part out of the private property of one of them.

ART. 1410. The payment of debts contracted by the husband or by the wife, before marriage, shall not be borne by the partnership.

Neither shall it bear the payment of fines or of pecuniary condemnations which may be imposed on either of them.

However, the payment of debts contracted by the husband or by the wife, prior to the marriage, and that of fines and condemnations imposed on either of them, may be claimed against the partnership property, after covering the expenses, mentioned in article 1408, if the debtor spouse should have no private capital, or were it insufficient; but at the time of the liquidation of the partnership the payments, made for the specified causes, shall be charged to said spouse.

ART. 1411. What has been lost and paid for during marriage by eithe of the spouses, in any kind of game whatsoever, shall not diminish hi or her respective share in the partnership.

Whatever has been lost and not paid for by either of the spouses i licit games shall be charged to the conjugal partnership.

SECTION FIFTH.—*Administration of the conjugal partnership.*

ART. 1412. The husband is the administrator of the conjugal part nership, with the exception of what is prescribed in article 59.

ART. 1413. Besides the powers the husband has as administrator, h may alienate and encumber for a valuable consideration the propert of the conjugal partnership without the consent of the wife.

Nevertheless, every alienation or agreement which the husband ma make with regard to said property in contravention of this code or i fraud of the wife shall not prejudice her nor her heirs.

ART. 1414. The husband may dispose by will of his half of the prop erty of the conjugal partnership only.

ART. 1415. The husband may dispose of the property of the conjuga partnership for the purposes mentioned in article 1409.

He may also bestow moderate gifts for objects of piety or beneficenc but without reserving to himself the usufruct.

ART. 1416. The wife can not bind the property of the conjugal part nership without the consent of the husband.

The cases prescribed in articles 1362, 1441, and 1442 are exceptec from this rule.

SECTION SIXTH.—*Dissolution of the conjugal partnership.*

ART. 1417. The conjugal partnership expires on the dissolution of the marriage or when it is declared void.

The spouse who, by reason of his or her bad faith, caused the annul ment, shall not receive any share of the property of the partnership.

The conjugal partnership shall also terminate in the cases mentioned in article 1433.

SECTION SEVENTH.—*Liquidation of the property of the conjugal partnership.*

ART. 1418. Upon the dissolution of the partnership an inventory shall immediately be made; but the same shall not be required for the liquidation:

1. When, after the partnership has been dissolved, one of the spouses or his or her legal representatives have at the proper time renounced its effects and consequences.

2. When the separation of the property may have preceded the dissolution of the partnership.

3. In the case to which the second paragraph of the preceding article refers.

In case of renunciation, the right granted creditors by article 1101 shall always be reserved.

ART. 1419. The inventory shall include specifically for the purpose of collating them the sums which, having been paid by the conjugal partnership, are to be deducted from the dowry or from the capital of the husband, in accordance with articles 1366, 1377, and 1427.

The amount of the gifts and alienations which must be considered illegal or fraudulent, in accordance with article 1413, shall also be brought to collation.

ART. 1420. There shall not be included in the inventory the effects constituting the conjugal couch ordinarily used. These effects, as well as the clothing and dresses ordinarily used by the deceased spouse, shall be delivered to the surviving one.

ART. 1421. After the inventory has been concluded the dowry of the wife shall first be liquidated and paid, according to the rules which for its restitution are fixed in section 3, chapter 3, of this title, and subject to the provisions of the following articles.

ART. 1422. After the dowry and the parapherna of the wife have been paid, the debts, charges, and obligations of the partnership shall be paid.

If the inventoried estate should not be sufficient to satisfy all the provisions of this and the preceding article, those of title 17 of this book shall be observed.

ART. 1423. After the debts, charges, and obligations of the partnership have been paid, the capital of the husband shall be liquidated and paid, in so far as the inventoried estate may reach, making the proper deductions according to the same rules which are prescribed in article 1366, with regard to dowry.

ART. 1424. After the deductions from the inventoried estate specified in the three preceding articles have been made, the remainder of the same estate shall constitute the assets of the conjugal partnership.

ART. 1425. The losses or deterioration which the personal property, belonging to either of the spouses, may have suffered even though by a fortuitous event, shall be paid out of the conjugal property, should there be any.

Those suffered by the real property shall not be payable in any case, except those falling upon the dowry property and which may have been caused by the fault of the husband, and which shall be indemnified in the manner prescribed in articles 1360 and 1373.

ART. 1426. The net remainder of the partnership property shall be divided, share and share alike, between the husband and the wife, or their respective heirs.

ART. 1427. The mourning apparel of the widow shall be paid out of the estate of the inheritance of the husband, according to the provisions of article 1379. The heirs of the husband shall pay it according to his standing and means.

ART. 1428. With regard to making the inventory, rules for the appraisal and sale of the property belonging to the conjugal partnership, guaranty and security for the respective dowries, and all other particulars, not expressly fixed in this chapter, the prescriptions of section fifth, chapter fifth, title third, book third, and sections second and third, chapter third of this title shall be observed.

ART. 1429. When the conjugal partnership is dissolved by the annulment of the marriage, the provisions of articles 1373, 1378, 1417, and 1440 shall be observed; and should it be dissolved by reason of the separation of the property of the spouses the provisions of chapter sixth of this title shall be observed.

ART. 1430. Support shall be given out of the property owned in common to the surviving spouse and to his or her children, pending the liquidation of the inventoried estate and until their share has been delivered to them, but it shall be deducted from their portion in so far as it exceeds what they should have received as fruits or income.

ART. 1431. Whenever the liquidation of the partnership property of two or more marriages contracted by the same person may have to be made simultaneously in order to determine the funds of each partnership, every kind of proof shall be admitted, in the absence of inventories, and in case of doubt, the partnership property shall be divided between the different partnerships in proportion to the time of their duration and to the property owned by the respective spouses.

CHAPTER SIXTH.

Separation of the property of the spouses and its administration by the wife during the marriage.

ART. 1432. In the absence of a specific declaration in the marriage contract, the separation of the property of the spouses, during the marriage, shall not take place except by virtue of a judicial decree, except in the case prescribed by article 50.

ART. 1433. The husband and the wife may request the separation of the property, and it shall be decreed, whenever the spouse of the plaintiff should have been condemned to a penalty which includes civil interdiction, or should have been declared an absentee, or should have given cause for divorce.

In order that the separation may be decreed, it shall be sufficient to present the final judgment rendered against the guilty or absent spouse in each one of the three cases above mentioned.

ART. 1434. After the separation of property has been ordered the conjugal partnership shall be dissolved, and its liquidation shall be made according to the provisions of this code.

Nevertheless, the husband and the wife shall mutually attend to their support during the separation, and to the support of the children, as well as to their education, each one in proportion to his or her respective means.

ART. 1435. The power to administer the property of the marriage granted to the husband by this code shall continue in force if the separation should have been granted at his instance; but, in such case, the wife shall not have any right to the subsequent profits of the partnership, and the rights and obligations of the husband shall be governed by the provisions of sections second and third, chapter third of this title.

ART. 1436. If the separation should have been granted at the instance of the wife by reason of the civil interdiction of the husband, the administration of all the property of the marriage and the right to all the future partnership property shall be transferred to the wife, to the exclusion of the husband.

If the separation should be granted because the husband has been declared an absentee, or because he has given cause for divorce, the wife shall enter upon the administration of her dowry and of all further property which may have been awarded to her as a result of the liquidation.

In all the cases referred to in this article the wife shall be obliged to comply with all that is prescribed in the second paragraph of article 1434.

ART. 1437. The suit for separation and the final judgment declaring it, when involving real property, must be entered and recorded, respectively, in the proper registries of property.

ART. 1438. The separation of the property shall not prejudice rights previously acquired by creditors.

ART. 1439. If the separation should cease by reconciliation, in cases of divorce, or because in the other cases the causes have disappeared, the property of the marriage shall again be governed by the same rules as before the separation, without prejudice to what may have been legally done during the same.

At the time of reunion the spouses shall specify in a public instrument the property which they bring anew, and said property shall be that forming the private estate of each one of them respectively.

In the case mentioned in this article, all said property shall always be considered as new property brought to the marriage, even though it be the same, either partially or wholly, which existed before the liquidation made by reason of the separation.

ART. 1440. The separation shall not entitle the spouses to exercise the rights stipulated under the presumption of death of one of them, nor those granted them by articles 1374 and 1420, but it shall not prejudice them in their exercise, when such case occurs, excepting the provisions of article 73.

ART. 1441. The administration of the property belonging to the marriage shall be transferred to the wife:

1. Whenever she is the guardian of her husband in accordance with article 220.

2. When she requests the declaration of absence of the said husband, in accordance with articles 183 and 185.

3. In the case of the first paragraph of article 1436.

The courts shall also confer the administration upon the wife, with the limitations they may consider advisable, if the husband should be a fugitive or should have been declared contumacious in a criminal cause, or if, being absolutely disqualified for the administration, he should have taken no steps with regard thereto.

ART. 1442. The wife, upon whom the administration of all the property of the marriage may devolve, shall have, with regard thereto, the identical powers and liabilities as the husband when he exercises it, but always subject to the provisions contained in the last paragraph of the preceding article and in article 1444.

ART. 1443. The administration of her dowry shall be transferred to the wife in the case prescribed in article 225, and when the court orders it by virtue of the provisions of article 1441, but she shall remain subject to what is prescribed in the second paragraph of article 1434.

GENERAL PROVISION.

ART. 1444. The wife can neither alienate nor encumber during the marriage, without judicial permission, the real property which may have pertained to her in case of separation, nor that, the administration of which may have been transferred to her.

The permission shall be granted provided the advisability or necessity for the alienation be proven.

When said alienation involves public securities or stock of commercial enterprises and companies and can not be postponed without serious or imminent injury to the estate in administration, the wife, with the intervention of an agent or broker, may sell them, placing the proceeds in judicial deposit until the approval of the judge or court of competent jurisdiction has been obtained.

The agent or broker shall always be personally liable for the making of the consignation or deposit referred to in the preceding paragraph.

TITLE IV.

Contract of purchase and sale.

CHAPTER FIRST.

Nature and form of this contract.

ART. 1445. By a contract of purchase and sale one of the contracting parties binds himself to deliver a specified thing and the other to pay a certain price therefor in money or in something representing the same.

ART. 1446. If the price of the sale should consist partly in money and partly in something else, the contract shall be judged by the manifest intention of the contracting parties. When this intention should not appear, the contract shall be considered as a barter if the value of the thing given as a part of the price exceeds that of the money or its equivalent, and otherwise it shall be considered as a sale.

ART. 1447. In order that the price may be considered fixed, it shall be sufficient that it be fixed with regard to another determinate thing

also specific, or that the determination of the same be left to the judgment of a specified person.

Should such person not be able to or not wish to fix the price, the contract shall be of no effect.

ART. 1448. The price of securities, grain, liquids, and of other perishable things shall also be considered as fixed when the prices fixed are the same as the things, if sold, would have on a certain day on exchange or on the market, or when a certain amount is fixed above or below the price of such day, on exchange or on the market, provided said price be fixed.

ART. 1449. The determination of the price can never be left to the judgment of one of the contracting parties.

ART. 1450. The sale shall be perfected between vendor and vendee and shall be binding on both of them, if they have agreed upon the thing which is the object of the contract and upon the price, even when neither has been delivered.

ART. 1451. A promise to sell or buy, there being an agreement as to the thing and price, gives a right to the contracting parties to mutually demand the fulfillment of the contract.

Whenever the promise to purchase and sell can not be fulfilled, the provisions relating to obligations and contracts of this book shall be observed by the vendor and by the vendee, as the case may be.

ART. 1452. The injury to or the profit of the thing sold shall, after the contract has been perfected, be governed by the provisions of articles 1096 and 1182.

This rule shall be applied to the sale of perishable things, made independently and for a single price, or without consideration as to weight, number, or measure.

If the perishable things should be sold for a price fixed with regard to weight, number, or measure, the risk shall not be charged to the vendee, until they have been weighed, counted, or measured, unless the latter should be in default.

ART. 1453. A sale, made subject to approval or trial of the things sold, and the sales of things which it is usual to test or try before being received, shall always be considered as made under a condition precedent.

ART. 1454. When earnest money or a pledge has been given in the contract of purchase and sale, the contract may be rescinded, if the vendee should agree to forfeit the money or the vendor to return double the amount.

ART. 1455. The expense of the execution of the instrument shall be for the account of the vendor, and those of the first copy and those subsequent to the sale shall be charged to the vendee, unless there is an agreement to the contrary.

ART. 1456. Forcible alienation by reason of public utility shall be governed by the provisions of special laws.

CHAPTER SECOND.

Capacity to purchase or sell.

ART. 1457. A contract of purchase and sale may be executed
persons who, according to this code, are authorized to bind thems
excepting the modifications contained in the following articles.

ART. 1458. The husband and the wife can not mutually sell pro
to each other, except in case the separation of property has been a
upon or when a judicial separation of the said property should
taken place, authorized in accordance with the provisions of ch
sixth, title third, of this book.

ART. 1459. The following persons can not acquire by purchase,
at public or judicial auction, neither in person nor by an agent:

1. The guardian or *protutor*, the property of the person or pe
who may be under their guardianship.

2. Agents, the property the administration or sale of which
have been intrusted to them.

3. Executors, the property intrusted to their care.

4. Public officials, the property of the State, municipalities, t
and also of public institutions, the administration of which has
intrusted to them.

This provision shall apply to judges and experts who, in any m
whatsoever, take part in the sale.

5. Associate justices, judges, members of the department of p
prosecution, clerks of superior and inferior courts, and offici
justice, the property and rights in litigation before the court i
jurisdiction or territory over which they exercise their respe
duties, this prohibition including the act of acquiring by assign

From this rule shall be excepted the cases in which hered
actions among coheirs are involved, or assignments in payme
debts, or security for the goods they may possess.

The prohibition contained in this number shall include the la
and solicitors with regard to the property and rights, which may b
object of the litigation, in which they may take part by virtue of
profession and office.

CHAPTER THIRD.

*Effects of the contract of purchase and sale when the thing sold ha
lost.*

ART. 1460. If, at the time of making the sale, the thing which
object thereof has been wholly lost, the contract shall be of no e

But if the thing should be lost in part only, the vendee shall c
between withdrawing from the contract or demanding the ex
part, paying its price, in proportion to the total sum agreed upon

CHAPTER FOURTH.

Obligations of the vendor.

SECTION FIRST.—*General provision.*

ART. 1461. A vendor is bound to deliver and warrant the thing which is the object of the sale.

SECTION SECOND.—*Delivery of the thing sold.*

ART. 1462. A thing sold shall be considered as delivered, when it is placed in the hands and possession of the vendee.

When the sale should be made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if in said instrument the contrary does not appear or may be clearly inferred.

ART. 1463. With the exception of the cases mentioned in the preceding article, the delivery of personal property shall be made by the delivery of the keys of the place or depository where it is stored or kept, and by the mere consent and agreement of the contracting parties, if the thing sold can not be transferred to the possession of the vendee, at the time of the sale, or if the latter already held it in his possession for any other reason.

ART. 1464. With regard to incorporeal things, the provisions of the second paragraph of article 1462 shall govern. In any other case in which it can not be applied, the placing of the titles of ownership in the possession of the vendee or the use which he may make of his right with the consent of the vendor shall be considered as a delivery.

ART. 1465. The costs of the delivery of the thing sold shall be borne by the vendor, and those of its removal or transportation by the vendee, except in case of a special stipulation.

ART. 1466. The vendor shall not be bound to deliver the thing sold, if the vendee should not have paid the price, or if a period for the payment has not been fixed in the contract.

ART. 1467. Neither shall the vendor be obliged to deliver the thing sold when a delay or time for payment may have been agreed upon, and it should be discovered after the sale that the vendee is insolvent to such a degree that the vendor is in imminent danger of losing the price.

From this rule is excepted the case in which the vendee gives security for the payment within the time agreed upon.

ART. 1468. The vendor must deliver the thing sold in its condition at the time of the completion of the contract.

All the fruits shall belong to the vendee from the day on which the contract was perfected.

ART. 1469. The obligation to deliver the thing sold includes that placing in the possession of the vendee all that is mentioned in t contract, according to the following rules:

If the sale of real property should be made with a statement of i area, at the rate of a certain price for a unit of measure or numb the vendor shall be obliged to deliver to the vendee, if the latter shou require it, all that may have been mentioned in the contract; b should this not be possible, the vendee may choose between a propo tional reduction in the price or the rescission of the contract, provid that in the latter case the decrease in the real estate is not less th one-tenth of the area given it.

The same shall be done, even when the area appears to be the sam if any part of the real estate is not of the character mentioned in t contract.

The rescission in such case shall only take place at the will of t vendee, when the inferior value of the thing sold exceeds one-tenth the price agreed upon.

ART. 1470. If in the case of the preceding article there is greater ar or number in real estate than those mentioned in the contract, t vendee shall be obliged to pay the price of the excess if the great area or number should not exceed one-twentieth of those mentioned the contract; but should it surpass said one-twentieth, the vendee m choose between paying the greater value of the estate or withdrawi from the contract.

ART. 1471. In the sale of real estate made for a fixed price and n at the rate of a specified sum for a unit of measure or number, t increase or decrease of the same shall not be considered, even wh greater or less area or amount than that stated in the contract may found.

The same shall take place when two or more estates should be so for a single price; but, if besides mentioning the boundaries, which a indispensable in every conveyance of real estate, their area and numb should be designated in the contract, the vendor shall be obliged deliver all that is included within said boundaries, even when th exceed the area or number specified in the contract; and, should he n be able to do it, he shall suffer a reduction in the price, in proporti to what is lacking in the area or number, unless the contract be annull by reason of the vendee not accepting the failure to deliver what h been stipulated.

ART. 1472. The actions arising from the three preceding articles sh prescribe after six months, counted from the day of the delivery.

ART. 1473. If the same thing should have been sold to differe vendees, the ownership shall be transferred to the person who m have first taken possession thereof in good faith, if it should be pe sonal property.

Should it be real property, it shall belong to the person acquiring i who first recorded it in the registry.

Should there be no entry, the property shall belong to the person who first took possession of it in good faith, and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

SECTION THIRD.—*Warranty.*

ART. 1474. By virtue of the warranty referred to in article 1461 the vendor shall warrant to the vendee:

1. The legal and peaceful possession of the thing sold.
2. That there are no hidden faults or defects therein.

§ 1º

Warranty in case of eviction.

ART. 1475. Eviction shall take place when by a final judgment, and by virtue of a right prior to the sale, the vendee is deprived of the whole or of a part of the thing purchased.

The vendor shall be liable for the eviction even though no stipulation has been included in the contract on the subject.

The contracting parties may, however, increase, decrease, or suppress this legal obligation of the vendor.

ART. 1476. Any stipulation exempting the vendor from obligation of answering for the eviction shall be void, provided there should be bad faith on his part.

ART. 1477. If a vendee should have renounced the right of warranty in the case of eviction and it occurs, the vendor must deliver only the price which the thing had at the time of the eviction, unless the vendee has made the renunciation knowing the risk of eviction and submitting to its consequences.

ART. 1478. If a warranty should have been stipulated, or if nothing has been agreed upon on this point, if the eviction has taken place, the vendee shall have the right to demand of the vendor—

1. The restitution of the price which the thing sold had at the time of the eviction, whether it be greater or less than that of the sale.
2. The fruits or proceeds, should he have been adjudged to deliver them to the person who won the suit instituted against him.
3. The costs of the suit which caused the eviction, and, in a proper case, those of the suit instituted against the vendor for the warranty.
4. The expenses of the contract, if the vendee should have paid them.
5. The damages and interest and the voluntary expenses or of mere recreation or ormentation, should the sale have been made in bad faith.

ART. 1479. Should the vendee lose, on account of the eviction, a part of the thing sold of such importance, in relation to the whole, that he would not have purchased it without said part, he may demand the rescission of the contract; but with the obligation to return the thing without other charges than those it had when he acquired it.

The same provision shall be observed when two or more
should be jointly sold for a lump sum, or a special price for each
them, should it clearly appear that the vendee would not hav
chased one without the other.

ART. 1480. A warranty can not be demanded until a final jud
may have been rendered by which the vendee should be adjud
lose the thing acquired or a part thereof.

ART. 1481. The vendor shall be obligated to the proper wa
whenever it is proved that he was given notice of the suit for e
at the instance of the vendee. In the absence of this notice the
shall not be bound to the warranty.

ART. 1482. A defendant vendee shall request within the perio
in the law of civil procedure for answering the suit that notice
be given to the vendor or vendors within the shortest period p

This notification shall be made in the manner established in s
for the summoning of defendants.

The time to answer granted to the vendee shall be suspende
the expiration of that granted the vendor or vendors to appe
answer the complaint, and which periods shall be the same a
granted all defendants by the aforesaid law of civil procedure, c
from the notification prescribed in the first paragraph of this ar

Should the persons summoned for eviction not appear in the
time and manner, the period in which to answer the suit shall c
with regard to the vendee.

ART. 1483. If the estate sold should be encumbered by an
apparent burden or easement, not mentioned in the instrument,
a nature that it must be presumed that the vendee would no
acquired it had he been aware thereof, he may request the resci
the contract, unless he should prefer the proper indemnity.

During a year, to be counted from the date of the execution
instrument, the vendee may either institute the rescissory act
request the indemnity.

After the lapse of one year, he can only demand such ind
within an equal period, to be counted from the date on whi
incumbrance or easement was discovered by him.

§ 2º

Warranty against hidden defects of or burdens on the thing so

ART. 1484. The vendor is bound to give a warranty against
defects which the thing sold may have should they render it u
the use to which it was destined, or if they should diminish said
such manner that had the vendee had knowledge thereof he wo
have acquired it or would have given a lower price for it; bu
vendor shall not be liable for the patent defects or those which
visible, neither for those which are not visible if the vendee sh
an expert and who by reason of his trade or profession should
perceive them.

ART. 1485. The vendor is liable to the vendee for the warranty against faults or hidden defects in the things sold, even when they should be unknown to him.

This provision shall not obtain if the contrary should have been stipulated and the vendor should not have been aware of said faults or hidden defects.

ART. 1486. In the cases of the two preceding articles the vendee may choose between withdrawing from the contract, the expenses which he may have incurred being returned to him, or demanding a proportional reduction of the price, according to the judgment of experts.

If the vendor knew of the faults or hidden defects in the thing sold and did not give notice thereof to the vendee, the latter shall have the same option, and, furthermore, be indemnified for the losses and damages should he choose the rescission.

ART. 1487. If the thing sold should be lost on account of hidden faults and the vendor was aware of them, he shall bear the loss, and return the price and pay the expenses of the contract, with losses and damages. If he was not aware thereof, he shall only return the price and pay the expenses of the contract which the vendee may have paid.

ART. 1488. If the thing sold had any hidden fault at the time of the sale, and should be lost afterwards by a fortuitous event or by fault of the vendee, the latter may demand of the vendor the price he paid, deducting the value the thing had when lost.

If the vendor acted in bad faith, he must pay losses and damages to the vendee.

ART. 1489. There shall be no liability for losses and damages in judicial sales, but all the other provisions of the preceding articles shall be applied.

ART. 1490. Actions arising from the provisions of the five preceding articles shall be extinguished after six months, counted from the delivery of the thing sold.

ART. 1491. If two or more animals should be sold together, whether it be for a lump sum or for a special price for each of them, the redhibitory vice of each one shall only cause the redhibition of the same and not that of the others, unless it appears that the vendee would not have purchased the sound one or ones without the defective animal.

This is presumed when a team, yoke, pair, or set is bought, even when a special price has been fixed for each one of the animals composing the same.

ART. 1492. The provisions of the preceding article, with regard to the sale of animals, is understood as applicable also to the sale of other things.

ART. 1493. Warranty for the hidden vices of animals and cattle shall not obtain in sales made at fairs or at public auctions, nor in the sale of riding beasts, sold as condemned, except in the case prescribed in the following article.

ART. 1494. Animals and cattle suffering from contagious dis shall not be the object of a contract of sale. Any contract made regard to the same shall be void.

A contract of sale of cattle and animals shall also be void, whe use or service for which they are acquired being stated, they are f to be useless therefor.

ART. 1495. If the hidden vice of animals, even if a professonal in tion has been made, should be of such a nature that the knowled experts is not sufficient to discover it, it shall be considered as redhibi

But if the veterinarian, through ignorance or bad faith, should f discover or to give notice of it, he shall be liable for losses and dam

ART. 1496. The redhibitory action, based on the vices or defec animals, must be instituted within forty days, counted from their d ery to the vendee, unless, by reason of the customs in each loc longer or shorter periods are established.

This action in the sale of animals may only be enforced with re to the vices and defects of the same, determined by law or by customs.

ART. 1497. If the animal should die within three days after b bought the vendor shall be liable, provided the disease that cause death, in the judgment of veterinarians, existed before the contra

ART. 1498. If the sale has been rescinded the animal must be retu in the condition in which it was sold and delivered, the vendee b liable for any injury due to his negligence and which does not from the redhibitory vice or defect.

ART. 1499. In the sale of animals and cattle with redhibitory the vendee shall enjoy the privilege mentioned in article 1486; bu must make use thereof within the same period which has been res ively fixed for the exercise of the redhibitory action.

CHAPTER FIFTH.

Obligations of the vendee.

ART. 1500. The vendee is obliged to pay the price of the thing at the time and place stipulated in the contract.

If the time and place should not have been fixed, the payment be made at the time and place where the thing sold is delivered.

ART. 1501. In the three following cases the vendee shall owe int from the time the thing is delivered until the payment of the price

1. Should it have been so stipulated.
2. Should the thing sold and delivered produce fruits or income.
3. Should he be in default in accordance with article 1100.

ART. 1502. Should the vendee be disturbed in the possession or ership of the thing acquired, or should have reasonable ground fear being disturbed by an action for recovery or mortgage suit may suspend the payment of the price until the vendor has caused disturbance or danger to cease, unless he gives security for the res

tion of the price, in a proper case, or should it have been stipulated that, notwithstanding any such contingency, the vendee shall be bound to make the payment.

ART. 1503. Should the vendee have reasonable grounds to fear the loss of the real property sold and its price, he may immediately request the rescission of the sale.

Should such grounds not exist, the provisions of article 1124 shall be observed.

ART. 1504. In the sale of real property, even though it may have been stipulated that in the absence of the payment of the price within the time agreed upon, the rescission of the contract shall take place by full right, the vendee may pay, even after the expiration of the period, as long as he has not been summoned either judicially or by a notarial act. After the suit has been instituted the judge can not grant him a further period.

ART. 1505. With regard to personal property, the rescission of the sale shall take place by full right for the benefit of the vendor when the vendee, before the lapse of the period fixed for the delivery of the thing, should not have appeared to receive it, or having appeared he should not have offered the price at the same time, unless a longer period has been stipulated for the payment thereof.

CHAPTER SIXTH.

Rescission of the sale.

ART. 1506. The sale shall be rescinded for the same causes as all other obligations, and furthermore for those mentioned in the preceding chapters and by conventional or legal redemption.

SECTION FIRST.—*Conventional redemption.*

ART. 1507. Conventional redemption shall take place when the vendor reserves to himself the right to recover the thing sold, with the obligation to comply with article 1518, and whatever more may have been agreed upon.

ART. 1508. The right referred to in the preceding article, in the absence of an express agreement, shall last four years counted from the date of the contract.

Should there be an agreement, the period shall not exceed ten years.

ART. 1509. If the vendor should not comply with the provisions of article 1518, the vendee shall irrevocably acquire the ownership of the thing sold.

ART. 1510. The vendor may bring his action against every possessor whose right arises from that of the vendee, even though in the second contract no mention should have been made of the conventional redemption; without prejudice to the provisions of the mortgage law with regard to third persons.

ART. 1511. The vendee substitutes the vendor in all his rights
actions.

ART. 1512. The creditors of the vendor can only make use of
conventional redemption against the vendee after having levied u
the property of the vendor.

ART. 1513. A vendee who has made an agreement of resale of a p
of an undivided estate and who should acquire the whole estate, in
case of article 404, may oblige the vendor to redeem the whole est
if the latter wishes to make use of the redemption.

ART. 1514. If several persons, jointly and in the same contr
should sell an undivided estate under condition of redemption, non
them can exercise this right for more than his respective share.

The same shall be observed if the person alone who has sold
estate has left several heirs, in which case each of the latter can o
redeem the part which he may have acquired.

ART. 1515. In the cases of the foregoing article, the vendee n
demand of all the vendors and coheirs that they come to an agreem
with regard to the redemption of the whole of the thing sold; s
should they not do so, the vendee can not be forced to a par
redemption.

ART. 1516. Each of the co-owners of an undivided estate, who sho
have sold his share separately, may independently exercise the ri
of redemption for his respective share and the vendee can not fo
him to redeem the entire estate.

ART. 1517. Should the vendee leave several heirs, the action
redemption can not be exercised against each of them, except for
respective share, whether it be undivided, or whether it has b
distributed among them.

But if the inheritance has been divided, and the thing sold has b
awarded to one of the heirs, the action of redemption may be brou
against him for the whole.

ART. 1518. The vendor can not exercise the right of redemption w
out returning to the vendee the price of the sale, and furthermore:

1. The expenses of the contract and any other legitimate paym
made by reason of the sale.

2. The useful and necessary expenses incurred by the thing sold.

ART. 1519. If, on the execution of the sale, there should be on
estate visible or grown fruits, no indemnity or payment pro rata s
be made for those existing at the time of the redemption.

Should there have been no fruits at the time of the sale, and so
exist at the time of the redemption, they shall be divided pro r
between the redeemer and the vendee, giving to the latter the sh
corresponding to the time he possessed the estate during the last ye
counted from the date of the sale.

ART. 1520. The vendor, who should recover the thing sold, sh
receive it free of all charges and mortgages imposed by the vend

but he shall be obliged to respect the lease contracts executed by the latter in good faith and according to the customs of the place where it is located.

SECTION SECOND.—*Legal redemption.*

ART. 1521. Legal redemption is the right to be subrogated, with the same conditions stipulated in the contract, in the place of the person who acquires a thing by purchase or in payment of a debt.

ART. 1522. A coowner of a thing held in common may exercise the redemption in case the shares of all the other coowners, or of any of them, are sold to a third party.

When two or more coowners wish to exercise the redemption, they shall only do so pro rata with regard to the share they have in the thing owned in common.

ART. 1523. The owners of the adjacent lands shall also have the right of redemption when the sale of a rural estate is involved the area of which does not exceed one hectare.

The right referred to in the preceding paragraph is not applicable to adjacent lands which are divided by brooks, drains, ravines, roads, and other apparent easements for the benefit of other estates.

If two or more adjacent owners should make use of the redemption at the same time, the one who is owner of the adjacent land of lesser area shall be preferred; and, should both be equal in area, the person who first requested it.

ART. 1524. The right of legal redemption can not be exercised except within nine days, counted from the entry in the registry, and in the absence thereof from the time the redeemer may have had knowledge of the sale.

The redemption of coowners excludes that of adjacent owners.

ART. 1525. In legal redemptions the provisions of articles 1511 and 1518 shall be observed.

CHAPTER SEVENTH.

Assignments of credits and other incorporeal rights.

ART. 1526. The assignment of a credit, right, or action shall produce no effect against a third person but from the time the date is considered fixed, in accordance with articles 1218 and 1227.

If said assignment involves real property, from the date of its entry in the registry.

ART. 1527. A debtor who, before having knowledge of the assignment, should pay the creditor shall be released from the obligation.

ART. 1528. The sale or assignment of a credit includes that of all the accessory rights, such as the security, mortgage, pledge, or privilege.

ART. 1529. A vendor in good faith shall be liable for the existence and legitimacy of the credit at the time of the sale unless it should have been sold as doubtful, but he shall not be liable for the solvency of the debtor unless it has been expressly stipulated, or if the insolvency should be prior and public.

Even in these cases he shall only be liable for the price receive for the expenses mentioned in No. 1 of article 1518.

The vendor in bad faith shall always be liable for the payment the expenses, and for the losses and damages.

ART. 1530. If the assignor in good faith should have made h liable for the solvency of the debtor, and the contracting parties not have stipulated anything with regard to the duration of the ity, it shall last one year only, to be counted from the assignment credit if the period had already matured.

If the credit should be payable within a term or period which h yet expired, the liability shall cease one year after its maturity.

Should the credit consist of a perpetual income, the liability sl extinguished after ten years, counted from the date of the assign

ART. 1531. A person who should sell an inheritance withou merating the things of which it is composed shall only be oblig prove that he is an heir.

ART. 1532. A person who sells for a total or lump sum certain incomes, or products, as a whole, shall perform by answering f legitimacy of the whole in general, but he shall not be obliged t rant each of the parts of which it may be composed, unless in th of eviction of the whole or of the greater part.

ART. 1533. Should the vendor have profited by some of the fru should have received anything from the inheritance he should s must pay the vendee therefor, should the contrary not have agreed upon.

ART. 1534. The vendee must, on his part, pay to the vendor al the latter may have paid for debts or charges on the estate and f credits he may have against the same, unless there has been an ment to the contrary.

ART. 1535. When a litigated credit is sold, the debtor shall ha right to extinguish the same by reimbursing the assignee for the the latter paid for it, the judicial costs incurred by him, and the in on the price from the day on which the same was paid.

A credit shall be considered as litigated from the day the suit ing to the same has been answered.

The debtor may make use of his right within nine days, co from the day the assignee should demand payment of him.

ART. 1536. From the provisions of the foregoing article are exc the assignments or sales made—

1. To a coheir or coowner of the right assigned.
2. To a creditor in payment of his credit.
3. To the possessor of an estate, subject to the right in litig which has been assigned.

CHAPTER EIGHTH.

General provision.

ART. 1537. All that is prescribed in this title is understood s to the provisions of the mortgage law with regard to real propert

TITLE V.

Exchange.

ART. 1538. Exchange is a contract by which each of the contracting parties binds himself to give a thing in order to receive another.

ART. 1539. If one of the contracting parties should have received the thing promised to him in exchange, and should prove that it did not belong to the person who gave it, he can not be forced to deliver the one he offered in exchange, and he shall perform by returning the one he received.

ART. 1540. A person who loses by eviction the thing received in exchange may choose between recovering the one which he gave in exchange or demanding an indemnity for losses and damages; but he can only make use of the right to recover the thing which he delivered while said thing remains in the possession of the other party, and, without prejudice to the rights acquired thereto, in good faith in the meantime, by a third person.

ART. 1541. Exchange shall be governed by the provisions relating to sales in all that is not specially fixed in this title.

TITLE VI.

Contracts of lease.

CHAPTER FIRST.

General provisions.

ART. 1542. A lease may be of things, works, or services.

ART. 1543. In a lease of things, one of the parties thereto binds himself to give to the other the enjoyment or use of a thing for a specified time and a fixed price.

ART. 1544. In a lease of works or services, one of the parties binds himself to execute a work or to render a service to the other for a specified price.

ART. 1545. Perishable things, which are consumed by use, can not be the object of this contract.

CHAPTER SECOND.

Leases of rural and town property.

SECTION FIRST.—*General provisions.*

ART. 1546. A person who binds himself to grant the use of a thing, to execute a work, or to render a service is a lessor; and a person who acquires the use of the thing or a right to the work or service, for which he binds himself to pay, is a lessee.

ART. 1547. When the performance of a contract of verbal lease has begun and the evidence of the price agreed upon is lacking, the lessee

shall return to the lessor the thing leased, paying him the price w
for the time he has enjoyed such thing may be adjusted.

ART. 1548. The husband can not give in lease the property o
wife, the father and guardian, that of the son or minor, and the ad
istrator of property, not having a special power, for a period excee
six years.

ART. 1549. With regard to third persons, leases of real prop
which are not duly recorded in the registry of property, shall be c
effect.

ART. 1550. Should it not be expressly forbidden in the contra
lease of things, the lessee may sublet the whole or a part of the th
leased without prejudice to his liability for the fulfillment of the
tract executed with the lessor.

ART. 1551. A subtenant, without prejudice to his obligation
regard to the sublessor, shall remain bound to the lessor for all
acts which refer to the use and preservation of the thing leased, in
manner agreed upon between the lessor and the lessee.

ART. 1552. The subtenant shall also be bound with regard to
lessor for the amount of the price agreed upon in the sublease, whi
due at the time of the summons, considering the payments mad
advance as not made, unless he has paid them according to custon

ART. 1553. The provisions relating to warranty, contained in
title of purchase and sale, are applicable to lease contracts.

In the cases in which the return of the price is proper, a reductio
the price shall be made proportional to the time for which the le
may have enjoyed the thing.

SECTION SECOND.—*Rights and obligations of the lessor and lessee*

ART. 1554. The lessor is obliged:

1. To deliver to the lessee the thing which is the object of the contr

2. To make thereon, during the lease, all the necessary repair
order to preserve it in condition to serve for the purpose to whic
was destined.

3. To maintain the lessee in the peaceful enjoyment of the lease
ing all the time of the contract.

ART. 1555. The lessee is obliged:

1. To pay the price of the lease in the manner agreed upon.

2. To use the thing leased as a diligent father of a family wo
applying the same to the use agreed upon; and, in the absence of
agreement, to the use which may be inferred from the nature of
thing leased according to the custom of the land.

3. To pay the expenses arising from the instrument constituting
contract.

ART. 1556. If the lessor or lessee should not comply with the obl
tions mentioned in the preceding articles, they may request the res
sion of the contract and indemnity for losses and damages, or only
latter, leaving the contract in force.

ART. 1557. The lessor can not change the form of the thing leased.

ART. 1558. If, during the lease, it be necessary to make any urgent repairs in the thing leased which can not be postponed until the expiration thereof, the lessee shall be obliged to permit the work, even though it be very annoying to him, and even if during such repairs he may be deprived of a part of the estate.

If the repairs should last more than forty days, the price of the lease shall be reduced in proportion to the time and to the part of the estate of which the lessee is deprived.

If the work should be of such nature that the part which the lessee and his family require for a dwelling becomes uninhabitable, he may rescind the contract.

ART. 1559. The lessee is obliged to give notice to the owner with the least possible delay of any usurpation or injurious alterations which any other person may have made or openly is preparing to make to the thing leased.

He is also obliged to give notice with the same urgency to the owner of the necessity of all the repairs included in No. 2 of article 1554.

In either case the lessee shall be liable for the losses and damages which, by reason of his negligence, may be caused to the owner.

ART. 1560. The lessor shall not be obliged to answer for the mere fact of a trespass made by a third person in the use of the estate leased, but the lessee shall have a direct action against the trespasser.

The fact of trespass does not exist if the third person, whether it be the administration or a private person, has acted by virtue of a right belonging to him.

ART. 1561. The lessee must return the estate at the expiration of the lease in the same condition in which he received it, except what may have been destroyed or impaired by time or by unavoidable reasons.

ART. 1562. If, at the time of the lease of the estate, the condition of the same was not mentioned, the law presumes that the lessee received it in good condition, unless there be proof to the contrary.

ART. 1563. The lessee is liable for the deterioration or loss suffered by the thing leased, unless he proves that it took place without his fault.

ART. 1564. A lessee is liable for the impairment caused by the members of his household.

ART. 1565. If the lease has been made for a specified time, it expires on the day previously fixed, without the necessity of any notice.

ART. 1566. If, on the expiration of the contract, the lessee continues enjoying the thing leased for fifteen days with the acquiescence of the lessor, it shall be understood that there is an implied new lease for the time mentioned in articles 1577 and 1581, unless a notice has previously been given.

ART. 1567. In the case of an implied renewal the obligations contracted by a third person for the security of the principal contract shall cease with regard thereto.

ART. 1568. If the thing leased is lost or any of the contracting par do not comply with what has been stipulated, the provisions of arti 1182, 1183, 1101, and 1124 shall be respectively observed.

ART. 1569. The lessor may judicially dispossess the lessee for an the following causes:

1. Upon the expiration of the conventional period or the one fixed the duration of leases in articles 1577 and 1581.

2. Default in payment of the price agreed upon.

3. Infraction of any of the conditions stipulated in the contract.

4. When the lessee employs the thing leased in uses or services stipulated and which cause the same to be impaired, or when he d not comply, with regard to its use, with the provisions of No. 2 article 1555.

ART. 1570. With the exception of the cases mentioned in the prec ing article, the lessee shall have the right to make use of the peri fixed in articles 1577 and 1581.

ART. 1571. The purchaser of a leased estate has a right to termin the lease in force at the time of making the sale, unless the contr is stipulated, and the provisions of the mortgage law.

If the purchaser should make use of this right, the lessee may dema that he be permitted to gather the fruits of the crop corresponding the current agricultural year and that he be indemnified by the ven for the losses and damages he may have suffered.

ART. 1572. A purchaser with an agreement of redemption can use the right of dispossessing the lessee until the term for the use the right of redemption has expired.

ART. 1573. A lessee shall have, with regard to the useful and vol tary improvements, the same right which are granted a usufructua

ART. 1574. Should there be no stipulation with regard to the pl and time of the payment of rent, the provisions of article 1171 sh govern as to place, and the customs of the land as to time.

SECTION THIRD.—*Special provisions for leases of rural property.*

ART. 1575. A lessee shall not have the right to a reduction of t rent on account of the sterility of the land leased or on account of t loss of the fruits through ordinary fortuitous events, but he shall ha said right in case of loss of more than half of the fruits throu extraordinary and unforeseen fortuitous events unless there is a spec agreement to the contrary.

By extraordinary fortuitous events shall be understood fire, w pestilence, extraordinary inundations, locusts, earthquakes, or any oth equally unfrequent events, and which the contracting parties could have reasonably foreseen.

ART. 1576. Neither shall a lessee have a right to a reduction of t rent, when the fruits have been lost, after having been separated fr their roots or trunks.

ART. 1577. The lease of a rural estate, when its duration is not fixed, shall be understood as executed for the full time required for the gathering of the fruits which the whole estate leased might produce in one year, or all it could produce at one time, even though two or more years may be necessary to obtain them.

That of arable lands, divided into two or more crops, shall be considered as executed for as many years as there are crops.

ART. 1578. The outgoing lessee must permit the incoming one the use of the place and of all other necessary means for the preparatory labor for the following year, and, mutually, the latter is obliged to permit the outgoing one all that may be necessary for the gathering and enjoyment of the fruits, all in accordance with the customs of the place.

ART. 1579. Leases for partnerships of arable lands, breeding cattle, and for industrial or manufacturing establishments shall be governed by the provisions relating to articles of copartnership and by the agreements of the contracting parties, and, in their absence, by the customs of the country.

SECTION FOURTH.—*Special provisions for the lease of town property.*

ART. 1580. In the absence of a special agreement for the repairs of town property, which should be borne by the owner, the customs of the place shall be observed. In case of doubt, they shall be understood as for the account of the owner.

ART. 1581. Should a term not have been fixed for the lease, it is understood for years, when an annual rent has been fixed, for months, when the rent is monthly, and for days, when it is daily.

In every case the lease ceases without the necessity of a special notice upon the expiration of the term.

ART. 1582. If the lessor of a house, or of a part thereof, destined for a dwelling for a family, or of a store or warehouse or industrial establishment, leases the furniture also, the lease of the latter shall be understood as executed for a time equal to that of the house leased.

CHAPTER THIRD.

Hiring of work and services.

SECTION FIRST.—*Services of paid servants and laborers.*

ART. 1583. This class of services may be contracted without a fixed period, for a fixed period, or for a specific work. A hiring for life is void.

ART. 1584. A domestic servant hired for a fixed time and to be employed in the personal service of his master, or of the family of the latter, may leave the service or be dismissed before the expiration of the term; but if the master dismisses the servant without sufficient cause, he shall indemnify him by paying him the wages due and those for fifteen additional days.

The master shall be believed, unless there is proof to the contr

1. With regard to the amount of the wages of the domestic se

2. With regard to the payment of the wages earned during th rent year.

ART. 1585. Besides what is prescribed in the preceding a with regard to masters and servants, the provisions of special and ordinances shall be observed.

ART. 1586. Field hands, mechanics, artisans, and other lab hired for a certain time and for a certain work can not leav be dismissed, without sufficient cause, before the fulfillment c contract.

ART. 1587. The dismissal of the servants, mechanics, artisans other hired laborers to which the preceding articles refer give right to dispossess them of the implements and of the buildings they may occupy by reason of their duties.

SECTION SECOND.—*Works at a price agreed upon or for a lump s*

ART. 1588. The execution of a work may be contracted for by a ing that the person who is to execute the same shall give his lab industry only, or that he furnish the materials also.

ART. 1589. If the person who contracted for the work bound hi to furnish the materials, he shall suffer the loss in case of the des tion of the work before it is delivered, unless there has been del receiving it.

ART. 1590. A person who has bound himself to give his lab industry only can not demand any payment if the work is destr before it is delivered, unless there should have been delay in rece the same, or if the destruction should have been due to the bad qu of the materials, provided that he may have given due notice of circumstance to the owner.

ART. 1591. The contractor of a building which may have destroyed by reason of defects in the construction shall be liabl the losses and damages if said building should collapse withi years, to be counted from the completion of the construction; and ing the same time the same liability shall be incurred by the arch who may have directed the work if the collapse is due to defec the ground or in the direction.

If the cause should be the noncompliance of the contractor wit conditions of the contract, the action for indemnity may be bro within fifteen years.

ART. 1592. A person who binds himself to do a work by piece measure may demand of the owner that he receive it in installm and that he pay therefor in proportion. The part paid for shall be sumed as approved and received.

ART. 1593. An architect or contractor who, for a lump sum, charge of the construction of a building, or of any other work in

of a plan agreed upon with the owner of the ground, can not demand an increase in the price, even if that of the materials or wages has increased, but he may do so when any change increasing the work should be made in the plans, provided the owner has given his authorization.

ART. 1594. The owner may desist, by his own will, from the construction of the work, even when it has been begun, indemnifying the contractor for all the expenses, labor, and profits which he may have obtained from the same.

ART. 1595. When a certain work has been entrusted to a person by reason of his personal qualifications, the contract is rescinded by the death of said person.

In such case, the owner must pay to the heirs of the constructor, in proportion to the price agreed upon, the value of the part of the work executed, and that of the prepared materials, provided he may obtain any benefit from such materials.

The same shall be understood if the person who contracted for the work can not finish it by reason of any cause independent of his will.

ART. 1596. A contractor is responsible for the work done by the persons he employs thereon.

ART. 1597. Those who furnish their labor and materials in a work agreed upon for a lump sum by a contractor have no action against the owner, except for the amount the latter may owe the former when the action is brought.

ART. 1598. When it should be agreed that the work is to be done to the satisfaction of the owner, in the absence of his acceptance the approval is understood as reserved for the proper expert judgment.

If the person who has to approve the work is a third person, his decision shall be final.

ART. 1599. Should there be no agreement or custom to the contrary, the price for the work must be paid upon delivery.

ART. 1600. A person who has executed a work on personal property has the right to retain the same as a pledge until he is paid therefor.

SECTION THIRD.—*Transportation by water and land of persons as well as of things.*

ART. 1601. Carriers of goods by land or by water shall be subject with regard to the keeping and preservation of the things entrusted to them, to the same obligations as determined for innkeepers by articles 1783 and 1784.

The provisions of this article shall be understood without prejudice to what is prescribed by the Code of Commerce with regard to transportation by sea and land.

ART. 1602. Carriers are also liable for the loss of and damage to the things which they receive, unless they prove that the loss or damage arose from a fortuitous event or force majeure.

ART. 1603. The provisions of these articles are understood without prejudice to the provisions of special laws and regulations.

TITLE VII.

Annuities (censos).[1]

CHAPTER FIRST.

General provisions.

ART. 1604. An annuity (*censo*) is constituted when any real pr is subjected to the payment of a pension or annual income in co sation for a capital which is received in cash, or for the full or p ownership of the property which is conveyed.

ART. 1605. An annuity is called emphyteutic (*censo enfitéutico*) a person transfers to another the beneficial ownership of an reserving to himself the legal ownership and a right to receive fr emphyteuticary an annual income in recognition of such owners

ART. 1606. An annuity is transferable or consignative (*censo c nativo*) when the owner of land imposes upon an estate belongi him the charge of an income or pension which he binds himself t to the lender for a sum in cash which he has received from the l

ART. 1607. An annuity is reservative or set apart (*censo reserv* when a person transfers to another the full ownership of an e reserving to himself the right to receive from said estate an a pension which is to be paid by the owner of the land.

ART. 1608. The nature of the annuity requires that the trans the principal or of the estate should be perpetual or for an unli time; however, the person paying the annuity may redeem it a will, even though the contrary should be stipulated, this pro being applicable to annuities actually existing.

It may, however, be stipulated that the redemption of the an can not be made during the life of the annuitant or of a specified son, or that it may not be redeemed within a certain number of y which can not exceed twenty in consignative annuities, nor sixty in reservative and in emphyteutic annuities.

ART. 1609. In order to carry out the redemption, the person p the annuity must give notice thereof one year in advance to the a tant or must pay to him, in advance, the amount of one year's in

ART. 1610. Annuities can not be partially redeemed except by v of an express agreement.

Neither can they be redeemed against the will of the annuitant u the payment of all the income due has been made.

ART. 1611. For the redemption of annuities constituted befor promulgation of this code, should the principal be unknown, it sh regulated by the principal which may result by computing the in at 3 per cent.

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[1] *Censo.*—Not technically a rent charge, but an annuity charged directly o estate, and also involving personal liability. (See article 1623.)

If the income is paid in fruits, for the determination of the capital, they shall be appraised at the average price they may have had during the last five years.

The provisions of this title shall not apply to special emphyteusis (*foros* and *sub foros*), surface rights, and any other similar encumbrances in which the principles of redemption of ownership shall be governed by a special law.

ART. 1612. The expenses arising from the redemption and liberation from annuities shall be borne by the person paying the same except those arising from unjustifiable opposition, in the judgment of the courts.

ART. 1613. The income or pension of annuities shall be determined by the parties upon the execution of the contract.

It may consist of money or fruits.

ART. 1614. The pensions shall be paid at the periods agreed upon, and, in the absence of an agreement, if they consist of money, by the years elapsed, counted from the date of the contract; and if of fruits, at the end of the respective crops.

ART. 1615. If the place at which the income is to be paid should not have been designated in the contract, this obligation shall be complied with at the place in which the estate which is charged with the annuity is located, provided the annuitant or his attorney have their domicile in the municipal district of the same town. Should this not be the case, but should the person paying the annuity reside there, the payment shall be made at the domicile of the latter.

ART. 1616. The annuitant, at the time of the delivery of the receipt of any income, can oblige the person paying the annuity to give him a memorandum in which it may appear that the payment has been made.

ART. 1617. Estates charged with annuities may be conveyed for a valuable or good consideration, as may also be the right to receive the income.

ART. 1618. Estates charged with annuities can not be divided among two or more persons without the express consent of the annuitant, even when acquired by inheritance.

If the annuitant should permit the division, the part of the annuity with which each portion remains charged shall be designated with his consent, as many different annuities being constituted as there are portions in which the estate is divided.

ART. 1619. If the estate charged with an annuity is to be awarded to several heirs, and the annuitant does not give his consent to the division, it shall be placed at auction among said heirs.

In the absence of agreement or if none of the parties in interest should offer the price of the appraisement, the estate shall be sold with the charge, the proceeds being distributed among the heirs.

ART. 1620. The principal as well as the income of annuities prescribes in accordance with the provisions of title 18 of this book.

ART. 1621. Notwithstanding the provisions of article 1110, the ment of two consecutive incomes shall be necessary to presume all the preceding ones have been paid.

ART. 1622. The person paying the annuity is obliged to pay the and other charges affecting the estate charged with the annuity.

When the person paying the annuity pays the income he may d therefrom the part of the charges to be paid by the annuitant.

ART. 1623. Annuities give rise to a real action against the charged. Besides the real action, the annuitant may bring a per action for the payment of the income in arrears and for damages interest when proper.

ART. 1624. The person paying the annuity can not ask for the r sion or reduction of the income on account of an accidental steril the estate nor on account of the loss of its fruits.

ART. 1625. When an estate charged with an annuity is totall stroyed or rendered useless by force majeure or by a fortuitous e the annuity shall be extinguished, the payment of the pension di tinuing.

If it is destroyed in part only, the person paying the annuity not be exempt from the payment of the pension, unless he prefe abandon the estate to the annuitant.

When there is fault on the part of the person paying the annui shall be bound, in either case, to indemnify for losses and damage

ART. 1626. In the case of the first paragraph of the preceding ar if the estate should be insured, the amount of the insurance sh liable for the payment of the principal of the annuity and of the inc due, unless the person paying the annuity should prefer to invest rebuilding the estate, in which case the annuity shall revive wit its effects, including the payment of the unpaid income. The annu may demand of the person paying the annuity that he secure the in ment of the amount of the insurance in the rebuilding of the esta

ART. 1627. If the estate charged with an annuity is take eminent domain, its price shall remain liable for the payment o principal of the annuity and of the pensions due, said annuity extinguished.

The foregoing provisions are also applicable in the case in whic taking by eminent domain is of a part of the estate only, shoul price be sufficient to cover the principal of the annuity.

Should it not be sufficient, the annuity shall continue to be ch on the remainder of the estate, provided its price be sufficient to the principal of the annuity and 25 per cent in addition. In any case the person paying the annuity shall be bound either to subst the part taken with another security or to redeem the annuity, a option, without prejudice to the provisions of article 1631, with re to emphyteutic annuities.

CHAPTER SECOND.

Emphyteutic annuities.

SECTION FIRST.—*Provisions referring to emphyteusis.*

ART. 1628. An emphyteutic annuity can only be charged on real property and in a public instrument.

ART. 1629. At the time of the constitution of the emphyteutic annuity the value of the estate and the annual income to be paid shall be fixed in the contract, under the penalty of nullity.

ART. 1630. If the pension should consist of a fixed amount of fruits, the kind and quality thereof shall be determined in the contract.

Should it consist of an aliquot part of those the estate may produce, in the absence of an express stipulation as to the intervention which the legal owner may exercise, the emphyteuticary shall give to said owner or his representative previous notice of the day on which he intends to commence the gathering of each kind of fruit, in order that he may, either personally or through his representative, inspect all the operations until he receives the share belonging to him.

After the notice has been given, the emphyteuticary may gather the crops, even when neither the legal owner nor his representative or agent is present.

ART. 1631. In case of the exercise of eminent domain, the provisions of the first paragraph of article 1627 shall be observed if the entire estate should be thus taken.

Should it be thus taken only in part, the price of what has been taken shall be divided between the legal and beneficial owner, the former receiving the part of the principal of the annuity, which proportionally belongs to the part taken, according to the value given to the entire estate when the annuity was constituted, or which served as a basis for the redemption, and the remainder shall belong to the emphyteuticary.

In this case the annuity shall continue on the rest of the estate, with the proper reduction of the principal and the pensions, unless the emphyteuticary chooses between the total redemption or the abandonment in favor of the legal owner.

If, in accordance with what has been agreed upon, laudemio is to be paid, the legal owner shall receive that, which for this reason pertains to him, only from the part of the price belonging to the emphyteuticary.

ART. 1632. The products of the estate and of its accessions belong to the emphyteuticary.

He has the same rights which the owner would have in the treasure and mines which may be discovered on the estate charged with the emphyteusis.

ART. 1633. The emphyteuticary may dispose of the emphyteutic estate and of its accessions by acts *inter vivos* as well as by last will, reserving the rights of the legal owner, and subject to the provisions of the following articles.

ART. 1634. If the pension should consist of an aliquot part o
fruits of the emphyteutic estate, neither an easement nor any
charge which may diminish the proceeds of the same shall be imp
upon it without the express consent of the legal owner.

ART. 1635. The emphyteuticary may freely bestow as a gi
exchange the estate, giving notice thereof to the legal owner.

ART. 1636. The legal and beneficial owners have the mutual rig
preemption and of redemption, provided they sell or give in pay
their respective ownership of the emphyteutic estate.

This provision is not applicable to obligatory alienations, for re
of public utility.

ART. 1637. For the purposes of the preceding article, a person
ing to alienate the ownership of an estate held in emphyteusis
give notice thereof to the other coowner, stating the final price
may be offered to him, or the one for which he desires to aliena
ownership.

Within the twenty days following the notice, the coowner may
use of the right of preemption by paying the price indicated. S
he not do so, he shall lose said right and the alienation may take

ART. 1638. If the legal owner or the emphyteuticary, in a p
case, should not have made use of the right of preemption to
the preceding article refers, he may make use of that of redempti
acquire the estate for the price at which it has been sold.

In such case the redemption must be made use of within the
working days following that of the execution of the bill of sal
said sale should be concealed, said period shall be counted fro
record thereof in the registry of property.

Concealment is presumed when the instrument is not filed i
registry within the nine days following that of its execution.

Besides this presumption, the concealment may be proven b
other legal means.

ART. 1639. If the alienation has taken place without the pre
notice prescribed in article 1637, the legal owner, and, in a proper
the beneficial owner may exercise the action of redemption at any
until one year has elapsed, to be counted from the day the alienat
entered in the registry of property.

ART. 1640. In judicial sales of emphyteutic estates, the legal
and the beneficial one, in their respective cases, may make use
right of preemption within the period fixed in the notices of the s
auction, paying the price which may serve as a basis for the au
and that of the redemption within the nine working days following
of the execution of the instrument.

In such case, the previous notice required by article 1637 shal
be necessary.

ART. 1641. If there are several estates alienated, charged wit
same annuity, the right of preemption or that of redemption can n
exercised with regard to some of them and to the exclusion of oth

ART. 1642. When the legal or beneficial ownership is vested in several persons *pro indiviso*, each one of them may make use of the right of redemption subject to the rules established for that of owners in common, preference being given to the legal owner if a part of the beneficial ownership should have been alienated, or to the emphyteuticary if the alienation should have been of the legal ownership.

ART. 1643. If the emphyteuticary should be disturbed in his right by a third party who disputes the legal ownership or the validity of the emphyteusis, he can not claim the corresponding indemnity from the legal owner if he does not summon him for the eviction, in accordance with the provisions of article 1481.

ART. 1644. In alienations for a valuable consideration of emphyteutic estates, laudemio shall be paid to the legal owner only when it has been expressly stipulated in the contract of emphyteusis.

If, when it has been stipulated, a fixed sum has not been specified, it shall consist of 2 per cent of the price of the alienation.

In emphyteusis prior to the promulgation of this code, which may be subject to the payment of laudemio, even though it should not have been stipulated, this prestation shall continue in the usual manner, but it shall not exceed 2 per cent of the price of the alienation, unless a higher one has been expressly agreed upon.

ART. 1645. The obligation to pay laudemio pertains to the person acquiring the estate, unless there is a stipulation to the contrary.

ART. 1646. If the emphyteuticary should have obtained permission from the legal owner for the alienation, or should have given him the previous notice prescribed in Article 1637, the legal owner can not demand the payment of laudemio except within a year following the day on which the public instrument is entered in the registry of property. With the exception of these cases this action shall be subject to ordinary prescription.

ART. 1647. The legal owner may every twenty-nine years demand the acknowledgment of his right by the person who is in possession of the emphyteutic estate.

The expenses of the acknowledgment shall be borne by the emphyteuticary, but no other prestation whatever, for this reason, shall be required of him.

ART. 1648. The estate shall be forfeited and the legal owner may demand its restitution:

1. By nonpayment of the pension for three consecutive years.

2. If the emphyteuticary does not comply with the conditions stipulated in the contract or seriously impairs the estate.

ART. 1649. In order that the legal owner may demand the forfeiture in the first case of the preceding article, he must demand payment of the emphyteuticary, either judicially or through a notary, and should the latter not pay within the thirty days following the demand the right of the owner may be freely exercised.

ART. 1650. The emphyteuticary may free himself from the forf in every case, by redeeming the annuity and paying the pensio within the thirty days following the formal demand for the payn the summons for the suit.

The creditors of the emphyteuticary may make use of the sam within thirty days following that on which the legal owner ma recovered the full ownership.

ART. 1651. The redemption of the emphyteusis shall consi payment of cash in full to the legal owner for the principal whi have been fixed as the value of the estate at the time of the co tion of the annuity, and no other prestation can be exacted, u should have been stipulated.

ART. 1652. In case of forfeiture, or in that of rescission of t tract of emphyteusis for any reason whatsoever, the legal owne pay for the improvements which may have increased the value estate, provided such increase exists at the time of the restituti

If the estate has deteriorated, through fault or negligence part of the emphyteuticary, the deterioration shall be set off the improvements, and, in so far as they do not suffice, the emp ticary shall remain personally bound to pay for them, as well as pensions due and not prescribed.

ART. 1653. In the absence of testamentary heirs, descendants, ants, a surviving spouse, and relatives within the sixth degree last emphyteuticary, the estate shall revert to the legal owner condition in which it may exist, unless the emphyteuticary has posed of it in another manner.

ART. 1654. The contract of subemphyteusis shall not be valid future.

SECTION SECOND.—*Special annuities (foros), and other contracts gous to that of emphyteusis.*

ART. 1655. Special annuities (*foros*), and any other charges of lar character which may be established after the promulgation code, should they be for an unlimited time, shall be governed provisions established for emphyteusis in the preceding section.

Should they be temporary or for a limited period, they shall sidered as leases and shall be governed by the provisions rela such contracts.

ART. 1656. The contract by virtue of which the owner of land its use for the planting of vines, during the time that the firs stocks may live, the grantee paying him an annual pension or fruits or in money, shall be governed by the following rules:

1. It shall be considered extinguished fifty years after the sion, when no other time has been expressly fixed therein.

2. It shall also be extinguished by the death of the first root or when two-thirds of those planted have become barren.

3. The grantee or farmer may plant sprigs or shoots from new vines during the time of the contract.

4. This contract does not lose its character by the power of making other plantations on the land granted, provided its main object should be the plantation of vines.

5. The grantee may freely transmit his right for a valuable or good consideration, but the use of the estate can not be divided unless the owner expressly consents thereto.

6. In alienations for a valuable consideration the grantor and grantee shall reciprocally have the rights of preemption and redemption, in accordance with the provisions for emphyteusis, and with the obligation of giving the previous notice prescribed in article 1637.

7. The farmer or grantee may relinquish or return the estate to the grantor when convenient, upon paying for the impairments caused by his fault.

8. The grantee shall have no right to the improvements existing on the estate at the time of the expiration of the contract, provided they are necessary or have been made in fulfillment of what has been agreed upon.

With regard to useful and voluntary improvements, he shall not be entitled to be paid for the same, unless he made them with the written consent of the owner of the land, who bound himself to pay for them. In such case said improvements shall be paid for according to the value they may have when the estate is returned.

9. A grantor may make use of the action of dispossession upon the expiration of the term of the contract.

10. If, after the expiration of the term of fifty years or the one expressly fixed by the persons interested, the grantee should continue in the use and enjoyment of the estate by the implied consent of the grantor, the former can not be dispossessed without previous notice, which the latter shall have to give him a year in advance to terminate the contract.

CHAPTER THIRD.

Transferable annuities (*censos consignativos.*)

ART. 1657. When the payment of the pension of the transferable annuity is stipulated in fruits, the species, quantity, and quality of the same must be fixed, and can not consist of an aliquot part of those which the estate charged with the annuity may produce.

ART. 1658. The redemption of a transferable annuity shall consist in the return to the annuitant in cash and in full of the principal paid for the constitution of the annuity.

ART. 1659. When a real action is proper against an estate, charged with an annuity, for the payment of pensions, if what remains of the value of the same is not sufficient to cover the principal of the annuity and 25 per cent in addition, the annuitant may oblige the person paying

the annuity, at the latter's option, to redeem the annuity or to complete the guarantee or to abandon the remainder of the estate in favor of the former.

ART. 1660. The annuitant may also make use of the right mentioned in the preceding article in the other cases in which the value of the estate should be insufficient to cover the principal of the annuity, and 25 per cent in addition if any of the following circumstances exist:

1. If the value of the estate should have decreased by the fault or negligence of the person paying the annuity.

In such case the latter shall also be liable for losses and damages.

2. When the person paying the annuity has failed to pay the pensions for two consecutive years.

3. When the person paying the annuity may have been declared a bankrupt or insolvent.

CHAPTER FOURTH.

Reservative annuities.

ART. 1661. Reservative annuities can not be validly constituted unless preceded by an appraisement of the estate by an estimate agreed to by the parties or upon a just expert appraisal.

ART. 1662. The redemption of this annuity shall take place by the person who pays it, delivering to the annuitant in cash and in full the principal which may have been fixed in accordance with the preceding article.

ART. 1663. The provisions of article 1657 are applicable to reservative annuities.

ART. 1664. In the cases prescribed in articles 1659 and 1660, the debtor of the reservative annuity can only be obliged to redeem the annuity or to abandon the estate in favor of the annuitant.

TITLE VIII.

Partnership.

CHAPTER FIRST.

General provisions.

ART. 1665. Partnership is a contract by which two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.

ART. 1666. Partnerships must have licit objects, and must be established for the common interests of the partners.

When the dissolution of an illicit partnership is declared, the profits shall be devoted to the charitable institutions of the domicile of the partnership, and, in their absence, to those of the province.

ART. 1667. Civil partnerships may be established in any form whatever, unless when real property or property rights should be contributed to the same, in which case a public instrument shall be necessary.

ART. 1668. Articles of copartnership are void, if real property is contributed to the same, if an inventory of said property is not made, signed by the parties, and which must be attached to the instrument.

ART. 1669. Partnerships, the articles of which are kept secret among the partners, and in which each one of the latter may contract in his own name with third persons, shall have no judicial personality.

This kind of partnership shall be governed by the provisions relating to property held in common.

ART. 1670. Civil partnerships, on account of the objects to which they are devoted, may adopt all the forms accepted by the Code of Commerce. In such case its provisions shall be applicable in so far as they do not conflict with those of this code.

ART. 1671. Partnerships are general or particular.

ART. 1672. General partnerships may consist of all the present property or of all the profits.

ART. 1673. Partnerships which include all the present property are those in which the parties contribute all the property which actually belongs to them to a common fund, with the intention of dividing the same among themselves, as well as all the profits they may acquire therefrom.

ART. 1674. In general partnerships of all present property, what belongs to each of the partners becomes the common property of all the partners, as well as all the profits which they may acquire therewith.

An agreement for the division of any other profits may also be made, but the property which the partners acquire subsequently by inheritance, legacy, or gifts shall not be included in the same, but the fruits of said property may be.

ART. 1675. General partnerships of profits include all that the partners may acquire by their industry or work during the continuation of the partnership.

Personal or real property which each of the partners may possess at the time of the celebration of the agreement shall continue to be their private property, the usufruct only passing to the partnership.

ART. 1676. Articles of general copartnership executed without specifying its nature only constitutes a general partnership of profits.

ART. 1677. Persons who are forbidden to mutually grant each other gifts or advantages can not contract a general partnership.

ART. 1678. A particular partnership has for its object specified things only, their use or profits, or a specified undertaking, or the exercise of a profession or art.

CHAPTER SECOND.

Obligations of partners.

SECTION FIRST.—*Obligations of the partners among themselves.*

ART. 1679. A partnership begins from the moment of the making of the agreement, if not otherwise stipulated.

ART. 1680. A partnership continues during the time agreed upon; in the absence of an agreement, for such time as the business which has been the exclusive object of the partnership may last, if by its nature it

has a limited duration; and in any other case during the lives of partners, without prejudice to the rights reserved to them by ar 1700 and to the provisions of article 1704.

ART. 1681. Every partner is a debtor of the partnership for what he has promised to contribute thereto.

He is also bound to eviction with regard to the specified and de mined things he may have contributed to the partnership in the s cases and in the same manner as a vendor is bound with regard to vendee.

ART. 1682. A partner who has bound himself to contribute a su money and fails to do so is at law a debtor for the interest thereon, f the day on which he should have contributed the same, without pr dice to indemnifying furthermore for the damages he may have ca thereby.

The same shall take place with regard to amounts he may have ta from the common funds, and interest shall be earned from the da which he took them for his private use.

ART. 1683. A partner who gives his services but contributes no c tal owes to the partnership the profits which, during its existence, may have earned in a branch of the industry which is the object of partnership.

ART. 1684. If a partner who is authorized to manage collect demandable sum, which was owed to him in his own name, fro person who owed the partnership another sum, also demandable, sum collected shall be charged to the two credits in proportion to t amounts, even when he may have given a receipt for his own acco only; but should he have given it on account of the common funds shall all be charged to the credit of the latter.

The provisions of this article are understood without prejudice the debtor using the privilege granted to him in article 1172, but onl the case the personal credit of the partner is more burdensome to h

ART. 1685. A partner who has received in full his share of a p nership credit, when the other partners had not collected theirs, obliged, if the debtor afterwards becomes insolvent, to contribute the partnership capital what he received, even though he may h given the receipt for his share only.

ART. 1686. Every partner shall be liable to the partnership for losses and damages suffered by it through his fault, and he can compensate them with the benefits which he may have given to partnership by his services.

ART. 1687. The risk of things, certain and specified, which are perishable, contributed to the partnership in order that only their and fruits be common, shall be borne by the partner owning them.

If the things contributed are perishable, or if they can not be k without deteriorating, or if they were contributed to be sold, the r shall be borne by the partnership. It shall also be borne by the sa

the absence of a special agreement with regard to the things con-
ibuted and appraised in the inventory, and, in such case, the claim
all be limited to the value at which they were appraised.

ART. 1688. The partnership is liable to every partner for the amounts
e may have disbursed on account of the same and for the proper
terest; it shall also be liable to every partner for the obligations he
ay have contracted in good faith by reason of the partnership busi-
ess, and for risks inseparable from its management.

ART. 1689. The losses and profits shall be distributed in accordance
ith what has been agreed upon. If an agreement exists only with
gard to the share of each one in the profits, his share in the losses
all be in the same proportion.

In the absence of an agreement, the share of each partner in the
rofits and losses shall be in proportion to what he may have con-
ibuted. The partner who contributes his services only shall receive
share equal to the one who has contributed the least. If besides his
ervices he should have contributed capital, he shall also receive the
roportional share which may pertain to him for this capital.

ART. 1690. If the partners have agreed to intrust to a third person
e designation of the share of each one in the profits and losses, said
esignation can be impugned only if it has evidently been made con-
rary to equity. In no case shall the partner, who has commenced to
xecute the decision of the third person or who has not impugned the
ame within a period of three months, counted from the time he had
nowledge thereof, object thereto.

The designation of the losses and profits can not be intrusted to one
f the partners.

ART. 1691. An agreement in which one or more of the partners are
xcluded from any share in the profits or losses is void.

Only the partner contributing his services but no capital may be
xempted from any liability in the losses.

ART. 1692. The partner who has been appointed manager in the
rticles of copartnership may execute all administrative acts, notwith-
tanding the opposition of his partners, unless he should act in bad
aith; and his power is irrevocable without legitimate cause.

A power executed after the agreement, without there having been
tipulated therein that it should be conferred, may be revoked at any
ime.

ART. 1693. If two or more partners have been intrusted with the
nanagement of the partnership without their duties having been fixed,
r without a statement having been made that one of them shall not
ct without the consent of the others, each one may severally exercise
ll acts of administration; but any of them may oppose the acts of the
thers before they have produced any legal effect.

ART. 1694. In case it should have been agreed that some of the man-
ging partners are not to act without the consent of the others, the
onsent of all shall be necessary for the validity of the acts; and the

absence or incapacity of any one of them can not be alleged
there should be imminent danger of a serious or irreparable in
the partnership.

ART. 1695. Should no agreement have been made with regard
form of management, the following rules shall be observed:

1. All the partners shall be considered agents, and whatever
of them may do by himself shall bind the partnership; but ea
may oppose the act of the others before they may have produc
legal effect.

2. Every partner may make use of the things which make
partnership capital, according to the customs of the country, pr
he does not do so against the interest of the partnership or i
manner as to prevent the use thereof to which his copartne
entitled.

3. Every partner may force the others to defray together with h
expenses necessary for the preservation of the things owned in co

4. None of the partners can, without the consent of the others,
any alteration in the partnership real property, even should he
that it is useful to the partnership.

ART. 1696. Every partner may associate another person in his
but said person shall not enter the partnership without the unan
consent of the other partners, even when the former is the manag

SECTION SECOND.—*Obligations of partners with regard to third p*

ART. 1697. In order that the partnership may be liable to a
person for the acts of one of the partners, it is necessary:

1. That the partner should have acted as such for the account
partnership.

2. That he should have the power to bind the partnership by
of an express or implied authority.

3. That he may have acted within the limits of his power or aut

ART. 1698. Partners are not jointly bound with regard to the
of the partnership, and none of them can bind the others by a pe
act, if they have not granted him a power therefor.

The partnership is not liable with regard to third persons for
which one partner may have performed in his own name or wit
power from the partnership therefor; but it is liable to the partne
far as said acts have benefited said partnership.

The provisions of this article shall be understood without pre
to the provisions of rule first of Art. 1695.

ART. 1699. The creditors of the partnership shall be preferred
creditors of each partner with regard to the partnership pro
Without prejudice to this right, the private creditors of each p
may demand the attachment and sale at auction of the latter's
in the partnership capital.

CHAPTER THIRD.

Manners of dissolving partnership.

ARTICLE 1700. Partnership is dissolved:

1. When the term for which it was constituted expires.

2. When the thing is lost, or the business for which it was constituted ends.

3. By the natural death, civil interdiction, or insolvency of any of the partners, and in the case prescribed in article 1699.

4. By the will of any of the partners, subject to the provisions of articles 1705 and 1707.

The partnerships referred to in article 1670 are excepted from the provisions of numbers 3 and 4 of this article, in the cases in which they should exist, according to the code of commerce.

ART. 1701. If a specific thing, which a partner had promised to contribute to the partnership, perishes before the delivery has been effected, its loss produces the dissolution of the partnership.

A partnership shall also be dissolved, in any case, by the loss of the thing, when the partner who contributes it reserves to himself the ownership thereof and transfers to the partnership the use or enjoyment of the same only.

But the partnership shall not be dissolved by the loss of the thing when this loss occurs after the ownership thereof has been acquired by the partnership.

ART. 1702. A partnership established for a specified time may be extended by the consent of all the partners.

The consent may be express or implied and it may be proven by the ordinary means.

ART. 1703. If the partnership is extended after the expiration of its term, it is understood that a new partnership is established. If it is extended before the expiration of the term, the original partnership continues.

ART. 1704. A stipulation is valid which provides that on the death of one of the partners the partnership shall continue among the survivors. In such case the heir of the deceased shall only be entitled to have a division made, fixing it on the day of the death of his constituent; and he shall participate in the subsequent rights and obligations only in so far as they are a necessary consequence of what has been done before said day.

If the stipulation should be that the partnership shall continue with the heir, it shall be enforced without prejudice to the provisions of No. 4 of article 1700.

ART. 1705. The dissolution of the partnership by the will or withdrawal of one of the partners shall only take place when a term for its duration has not been fixed, or if this term does not appear from the nature of the business.

In order that the withdrawal may be of effect, it must be mad good faith at the proper time; notice thereof shall also be given to other partners.

ART. 1706. A withdrawal is in bad faith when the person who m it proposes to appropriate to himself alone the benefits which sh be common. In such case the person who renounces it does not himself from liability to his partners, and they shall have the pow exclude him from the partnership.

A withdrawal shall be presumed as not made at the proper when, the things not being integral, the partnership is intereste delaying its dissolution. In such case the partnership shall cont until the conclusion of the pending transactions.

ART. 1707. No partner can demand the dissolution of a partner which, either by a provision of the articles or by the nature of the b ness, has been constituted for a specified time unless there should e sufficient reason, such as when one of the partners fails to comply his obligations, or when he becomes incapacitated for the partner business, or any other similar cause, in the judgment of the courts

ART. 1708. The distribution among the partners shall be gover by the rules for inheritances, with regard to its form as well as to obligations arising therefrom. The partner contributing his serv only shall not be given any part of the property contributed, but its fruits and profits, in accordance with the provisions of article 1 unless the contrary has been expressly stipulated.

TITLE IX.

Agency.

CHAPTER FIRST.

CHARACTER, FORM, AND KINDS OF AGENCY.

ART. 1709. By the contract of agency, a person binds himself render some service, or to do something for the account or at the requ of another.

ART. 1710. An agency may be express or implied.

An express agency may be given by a public or private instrum and even by parol.

The acceptance may also be express or implied, the latter be inferred from the acts of the agent.

ART. 1711. In the absence of an agreement to the contrary, agency is presumed to be gratuitous.

Nevertheless, if the agent has for an occupation the performance services of the kind to which the agency refers, the obligation of co pensating him is presumed.

ART. 1712. Agency is general or special.

The former includes all the business of the principal.

The latter, one or more specific transactions.

ART. 1713. An agency stated in general terms only includes acts administration.

In order to compromise, alienate, mortgage, or to execute any other t of strict ownership an express commission is required.

The power to compromise does not give authority to place the matter the hands of arbitrators or amicable compromisers.

ART. 1714. An agent can not exceed the scope of his authority.

ART. 1715. The scope of the authority shall not be considered as ceeded if it should be fulfilled in a manner more advantageous for e principal than that specified by him.

ART. 1716. An emancipated minor can be an agent; but the principal all only have an action against him in accordance with the provisions garding the obligations of minors.

A married woman may only accept an agency by permission of her sband.

ART. 1717. When an agent acts in his own name, the principal shall ve no action against the persons with whom the agent has con- acted, nor the said persons against the principal.

In such case, the agent is directly liable to the person with whom he s contracted, as if the transaction were his own. The case involving ings belonging to the principal is excepted.

The provision of this article shall be understood without prejudice to tions between principal and agent.

CHAPTER SECOND.

Obligations of the agent.

ART. 1718. An agent by his acceptance remains bound to fulfill the gency and shall be liable for the losses and damages caused to the rincipal through his noncompliance.

He must also finish business already begun on the death of the princi- al, when there is any danger in delay.

ART. 1719. In complying with the agency, the agent shall follow the structions of the principal.

In their absence, he shall do all that which, according to the character f the business, would be done by a good father of a family.

ART. 1720. Every agent is bound to give an account of his transac- ons and to pay to the principal all that he may have received by virtue f the agency, even though what has been received is not owed to the rincipal.

ART. 1721. An agent may appoint a substitute when the principal as not forbidden him to do so; but he shall be liable for the acts of he substitute—

1. When the power to appoint such substitute was not granted him.

2. When such power was granted him, but without designating the erson, and the person appointed is well known to be incapacitated or nsolvent.

What is done by the substitute, appointed against the prohibition of he principal, shall be void.

ART. 1722. In the cases included in the two numbers of the ing article, the principal may furthermore bring an action agai substitute.

ART. 1723. The liability of two or more agents, even thoug should have been simultaneously appointed, is not joint unles been so stated.

ART. 1724. An agent shall owe interest for the sums he has to his own use, from the day on which he did so, and for those he still owes, after the expiration of the agency, and from the his default.

ART. 1725. An agent who acts as such is not personally liabl person with whom he contracted, unless he expressly binds therefor, or when he exceeds the scope of the authority without him sufficient notice of his powers.

ART. 1726. An agent is liable not only for fraud, but also fo gence, which must be judged with more or less severity by the according as to whether the agency may have been gratui otherwise.

CHAPTER THIRD.

Obligations of the principal.

ART. 1727. A principal must fulfill all the obligations which th may have contracted, within the scope of his authority.

A principal is liable, in so far as the agent has exceeded his only when he ratifies the same, expressly or in an implied mann

ART. 1728. A principal must advance to the agent, if the latter request it, the amounts necessary for the execution of the agenc

Should the agent have advanced them, the principal must rei him for the same, even if the transaction should not have suc provided the agent should have been exempted from blame.

The reimbursement shall include interest on the amounts ad counted from the day on which the advance was made.

ART. 1729. The principal must also indemnify the agent for al and damages he may incur in complying with the agency, witho nor imprudence on the part of said agent.

ART. 1730. The agent may retain the things which are the ob the agency in pledge until the principal pays the indemnity an bursement referred to in the two preceding articles.

ART. 1731. If two or more persons have appointed an agen common transaction, they shall be jointly liable to the latter for effects of the agency.

CHAPTER FOURTH.

Manner of terminating the agency.

ART. 1732. Agency is terminated—

1. By revocation.
2. By withdrawal of the agent.
3. By death, interdiction, bankruptcy, or insolvency of the pr or of the agent.

ART. 1733. The principal may, at his will, revoke the power and compel the agent to return the instrument containing the same in which the authority was given.

ART. 1734. If the agency should have been granted to contract with determined persons, its revocation can not prejudice them unless they were given notice.

ART. 1735. The appointment of a new agent for the same business produces a revocation of the previous agency from the day on which notice was given to the former agent, excepting the provisions of the preceding article.

ART. 1736. An agent may withdraw from the agency by giving notice to the principal. Should the latter suffer any losses through the withdrawal, the agent must indemnify him therefor, unless said agent bases his withdrawal upon the impossibility of continuing to act as such without serious detriment to himself.

ART. 1737. Even should the agent renounce the agency for sufficient cause, he must continue as such until the principal should have been able to take the necessary steps to provide therefor.

ART. 1738. What has been done by the agent, when he was not aware of the death of the principal, or of any other of the causes which terminate the agency, shall be valid and of effect with regard to third persons who may have contracted with the agent in good faith.

ART. 1739. In case the agent dies, his heirs must inform the principal thereof, and meanwhile adopt the measures which circumstances may require for the interest of the latter.

TITLE X.

Loans.

GENERAL PROVISION.

ART. 1740. By the contract of loan, one of the parties delivers to the other, either anything not perishable, in order that the latter may use it during a certain period and return it to the former, in which case it is called commodatum, or money or any other perishable thing, under the condition to return an equal amount of the same kind and quality, in which case it is merely called a loan.

Commodatum is essentially gratuitous.

A simple loan may be gratuitous, or made under a stipulation to pay interest.

CHAPTER FIRST.

Commodatum.

SECTION FIRST.—*Nature of commodatum.*

ART. 1741. The bailor retains the ownership of the thing loaned. The bailee acquires the use thereof, but not its fruits; if any compensation is involved, to be paid by the person requiring the use, the agreement ceases to be a commodatum.

ART. 1742. The obligations and rights which arise from the comm
datum pass to the heirs of both contracting parties, unless the lo
has been made in consideration for the person of the bailee, in whi
case his heirs shall not have the right to continue using the thi
loaned.

SECTION SECOND.—*Obligations of the bailee.*

ART. 1743. The bailee is obliged to pay the ordinary expenses whi
are necessary for the use and preservation of the thing loaned.

ART. 1744. If the bailee puts the thing to a different use than th
for which it was loaned, or keeps it in his possession for a longer ti
than that agreed upon, he shall be liable for its loss, even when sa
loss occurs by reason of a fortuitous event.

ART. 1745. If the thing loaned was delivered under appraisal and
lost, even it be by reason of a fortuitous event, the bailee shall be liab
for its value, unless there is an agreement in which he is express
exempted from liability.

ART. 1746. The bailee is not liable for the wear and tear suffered
the thing loaned by reason of its use only, and without his fault.

ART. 1747. A bailee can not retain the thing loaned under the p
text that the bailor owes him something, even should it be by reason
expenses.

ART. 1748. All the bailees to whom the thing is jointly loaned sh
be jointly liable for the same, in accordance with the provisions of th
section.

SECTION THIRD.—*Obligations of the bailor.*

ART. 1749. A bailor can not demand the thing loaned, except aft
the termination of the use for which he loaned it. Nevertheless,
before this period the bailor has an urgent necessity for the same,
may demand its restitution.

ART. 1750. If the duration of the commodatum should not have be
stipulated nor the use to which the thing loaned was to be devote
and the latter should not be determined by the customs of the lan
the bailor may demand it at his will.

In case of doubt the burden of proof falls upon the bailee.

ART. 1751. The bailor must pay the extraordinary expenses arisi
during the contract for the preservation of the thing loaned, provid
that the bailee informs him thereof before making them, unless th
should be so urgent that the answer to the notice cannot be waited f
without risk.

ART. 1752. The bailor who, knowing the vices of the thing loane
should not have informed the bailee thereof, shall be liable to him f
the damages he may have suffered by reason thereof.

CHAPTER SECOND.

Simple loan.

ART. 1753. A person receiving money or any other perishable thing on loan acquires its ownership, and is bound to return to the creditor an equal amount of the same kind and quality.

ART. 1754. The obligation of a person taking money on loan shall be governed by the provisions of article 1170 of this Code.

If what has been loaned is another perishable thing, or a quantity of metal, not coined, the debtor owes a quantity equal to that received, and of the same kind and quality, even though it may have suffered a change in its value.

ART. 1755. Interest shall only be owed when it has been expressly stipulated.

ART. 1756. A borrower who has paid interest without it being stipulated can not claim it nor charge it to the capital.

ART. 1757. Pawn shops shall furthermore be subject to the proper regulations.

TITLE XI.

Depositum.

CHAPTER FIRST.

Depositum in general and its different kinds.

ART. 1758. A depositum is constituted from the time a person receives a thing belonging to another with the obligation of keeping and returning it.

ART. 1759. A depositum may be constituted judicially or extrajudicially.

CHAPTER SECOND.

Depositum properly speaking.

SECTION FIRST.—*Nature and essence of the contract of depositum.*

ART. 1760. Depositum is a gratuitous contract, unless there is an agreement to the contrary.

ART. 1761. Personal property only can be an object of a depositum.

ART. 1762. An extrajudicial depositum is either necessary or voluntary.

SECTION SECOND.—*Voluntary depositum.*

ART. 1763. A voluntary depositum is that in which the delivery is made by the will of the bailor. The depositum may be made by two or more persons who believe themselves to have a right to the thing bailed in the hands of a third person, who shall, in a proper case, deliver said thing to the proper person.

ART. 1764. If a person qualified to contract accepts the deposi made by another who is an incapacitated person, the former is sub to all the obligations of a bailee, and may be compelled to return i the guardian, curator, or administrator of the person who made depositum, or by the same person, should he become qualified.

ART. 1765. If the depositum has been made by a qualified perso the hands of another who is incapacitated, the bailor shall only have action to recover the thing bailed as long as it remains in the pos sion of the bailee, or to compel the latter to pay him the sum by wh he may have profited by the thing, or its price.

SECTION THIRD.—*Obligations of the bailee.*

ART. 1766. A bailee is obliged to keep the thing, and, when requi to return it to the bailor or to his legal representatives, or to the pe who may have been designated in the contract. His liability, regard to the keeping and loss of the thing, shall be governed by provisions of title first of this book.

ART. 1767. The bailee can not make use of the thing bailed wit the express permission of the bailor.

Otherwise he shall be liable for losses and damages.

ART. 1768. When the bailee has permission to make use of the t bailed, the contract loses the character of a depositum and becom loan or a commodatum.

The permission shall not be presumed, and its existence must proven.

ART. 1769. When the thing bailed is delivered closed and sealed, bailee must return it in the same condition, and shall be liable for losses and damages if the seal or lock should have been broken by fault.

Such bailee is presumed to be to blame unless the contrary is pro

With regard to the value of the thing bailed, the statement of bailor shall be admitted when the forcible opening can be charge the bailee, should there be no proof to the contrary.

ART. 1770. The thing bailed shall be returned with all its proc and accretions.

Should the depositum consist of money, the provisions relatin agents, contained in article 1724, shall be applied to the bailee.

ART. 1771. The bailee can not demand that the bailor prove tha is the owner of the thing bailed.

Nevertheless, should he discover that the thing has been stolen who is its true owner, he must inform the latter of the depositum.

If the owner, notwithstanding this, does not claim the deposi within the term of one month, the bailee shall be free from any liabi by returning the thing bailed to the person from whom he receive

ART. 1772. If there are two or more bailors, and they should no joint and the thing can be divided, each one can demand his part o

When they are joint bailors, or the thing does not admit of division, the provisions of articles 1141 and 1142 of this code shall govern.

ART. 1773. When the bailor loses his capacity to contract, after having made the depositum, the latter can not be returned except to the persons who have the administration of his property and rights.

ART. 1774. When, on making the depositum, a place was designated for the return of the thing bailed, the bailee must take the thing bailed to such place; but the expense incurred by the conveyance shall be charged to the bailor.

Should no place have been designated for the return, it shall be made at the place where the thing bailed may be, even should it not be the same place where the depositum was made, provided there was no malice on the part of the bailee.

ART. 1775. The depositum shall be returned to the bailor when he claims it, even though a specified term or time for such return may have been fixed in the contract.

This provision shall not be observed when the depositum in the possession of the bailee has been judicially attached, or should the latter have been notified of the objection of a third person to the return or to the transfer of the thing bailed.

ART. 1776. The bailee, who may have sufficient reasons for not keeping the depositum, may, even before the term designated, return it to the bailor, and if the latter refuses it, he may obtain its consignation from the judge.

ART. 1777. The bailee, who may have lost the thing bailed through force majeure and received another in its place, shall be obliged to deliver the latter to the bailor.

ART. 1778. The heir of the bailor who, in good faith, may have sold the thing which he did not know was bailed, is only obliged to return the price he may have received or to assign his actions against the purchaser in case the price should not have been paid to him.

SECTION FOURTH.—*Obligations of the bailor.*

ART. 1779. A bailor is obliged to reimburse the bailee for the expenses he may have incurred in the preservation of the thing bailed, and to indemnify him for all the injuries he may have suffered by reason of the depositum.

ART. 1780. The bailee may retain the thing bailed until the full payment of what is due him by reason of the depositum.

SECTION FIFTH.—*Necessary depositum.*

ART. 1781. A depositum is necessary:

1. When made in compliance with a legal obligation.
2. When it takes place on account of any calamity, such as fire, ruin, pillage, shipwreck, or other similar cases.

ART. 1782. The depositum included in the first number of the ceding article shall be governed by the provisions of the law w establishes it, and, in the absence thereof, by those of volun depositum.

Those included in the second number shall be governed by the r of voluntary depositum.

ART. 1783. The depositum of goods made by travelers in inn hostelries shall also be considered a necessary one. The keepe inns and hostelries are liable for them as such bailees, provided notice thereof may have been given to them or to their employees, that the travelers on their part take the precautions which said keepers or their substitutes may have advised them concerning care and vigilance of said goods.

ART. 1784. The liability referred to in the preceding article s include damages to the goods of the travelers caused by servant employees of the keepers of inns or hostelries as well as by strang but not those arising from robbery or which may be caused by other case of force majeure.

CHAPTER THIRD.

Sequestration.

ART. 1785. A judicial deposit or sequestration takes place whe attachment or placing in security of property in litigation is ordere

ART. 1786. Personal as well as real property may be subjec sequestration.

ART. 1787. The bailee of the property or things sequestrated can be released from his charge until the controversy which caused i ended, unless the judge should order it on account of the consen all the persons interested, or for any other legal cause.

ART. 1788. The bailee of property sequestrated is obliged to con with regard thereto with all the obligations of a good father of a fan

ART. 1789. Judicial sequestration shall be governed by the provis of the law of civil procedure in whatever is not prescribed in this c

TITLE XII.

Aleatory contracts, or those depending on chance.

CHAPTER FIRST.

General provision.

ART. 1790. By an aleatory contract one of the parties binds him or both mutually bind themselves, to give or do something as an eq alent for what the other party is to give or do in case of the occurr of an event which is uncertain or may happen at an undetermined t

CHAPTER SECOND.

Insurance contracts.

ART. 1791. An insurance contract is one by which the underwriter is liable for the fortuitous damages which may occur to the insured personal or real property, in consideration of a certain price, which may be unrestrictedly fixed by the parties.

ART. 1792. Two or more owners may mutually insure against fortuitous damages which may occur to their respective property. This contract is called mutual insurance, and, when it has not been otherwise stipulated therein, it is understood that such damages shall be paid by all the contracting parties in proportion to the value of the property which each one has insured.

ART. 1793. An insurance contract must be made in a public or private instrument signed by the contracting parties.

ART. 1794. Said instrument must specify—

1. The designation and situation of the things insured and their value.

2. The kind of risks for which indemnity is stipulated.

3. The day and hour on which the effects of the contract commence and end.

4. All the other conditions to which the contracting parties have agreed.

ART. 1795. The contract is of no effect with regard to the part in which the amount of the insurance exceeds the value of the thing insured, and more than one insurance can not be collected for the whole value of the same.

Should two or more insurance contracts exist involving the same object, each underwriter shall be liable for the damage, in proportion to the capital he may have insured, until the full value of the thing insured has been paid by them.

ART. 1796. Should the damage occur, the insured must inform the underwriter and all the other persons concerned thereof within the stipulated time, and, in its absence, within twenty-four hours, to be counted from the time the insured had knowledge of the loss. Should he not do so, he shall have no action against them.

ART. 1797. A contract shall be void if at the time it was made the insured knew that the damage which was the object of the same had already occurred, or if the underwriter knew that the property insured was already free from said danger.

CHAPTER THIRD.

Gambling and betting.

ART. 1798. The law does not permit any action to claim what is won in a game of chance, luck, or hazard; but the person who loses can not recover what he may have voluntarily paid, unless there should have been fraud, or should he be a minor or incapacitated to administer his property.

ART. 1799. The provisions of the foregoing article with regar gambling are also applicable to betting.

Bets analogous to prohibited games are considered as prohibite

ART. 1800. Games contributing to the exercise of the body, suc those the object of which is to acquire skill in the management of a and foot or horse races, by vehicles, ball games, and others of a si character are not considered prohibited.

ART. 1801. A person who loses in a game or a bet which is not hibited is civilly liable.

Nevertheless, the judicial authority may either not admit the c when the sum which was wagered in the game or bet is excessiv may reduce the obligation to the amount it may exceed the custon a good father of a family.

CHAPTER FOURTH.

Life annuities.

ART. 1802. An aleatory contract of annuity binds the debtor to a pension or annual income to one or more specified persons for life a principal in personal or real property, the ownership of which i once transferred to said debtor charged with the income.

ART. 1803. An annuity may be constituted on the life of the pe who gives the capital, on that of a third person, or on that of sev persons.

It may also be constituted in favor of the person or persons for w life it is granted, or in favor of another or other different persons.

ART. 1804. An annuity constituted on the life of a person dece at the time of its execution, or who, at the same time, may be suffe from disease which may cause his death within the twenty days fol ing that date, is void.

ART. 1805. Default in payment of pensions due does not autho the receiver of the life annuity to demand the reimbursement of principal, nor to retake possession of the estate alienated; he s only have the right to judicially demand the payment of the incom arrears and security for the future ones.

ART. 1806. The annuity pertaining to the year in which the pe who enjoys it dies shall be paid in proportion to the days he may h lived; if it was to be paid in installments in advance, the total amo for the term which began during his life shall be paid.

ART. 1807. A person who, for a good consideration, constitutes annuity on his property, may dispose, at the time of the executio the contract, that said annuity shall not be subject to attachments debts of the annuitant.

ART. 1808. An annuity can not be demanded without proving existence of the person on whose life it may be constituted.

TITLE XIII.

Compromises and arbitrations.

CHAPTER FIRST.

Compromises.

ART. 1809. A compromise is a contract by which each of the parties in interest, by giving, promising, or retaining something, avoids the provocation of a suit, or terminates one that has already been instituted.

ART. 1810. A guardian can not compromise with regard to the rights of a person who is subject to guardianship, except in the manner prescribed in No. 12 of article 269 and in article 274 of this code.

The father, and the mother in a proper case, may compromise with regard to the property and rights of the child who is under his or her authority, but if the value of the object involved in the compromise should exceed 2,000 pesetas, it shall have no effect without judicial approval.

ART. 1811. Neither the husband nor the wife can compromise with regard to dowry property and rights, except in the cases and with the formalities established for alienating or encumbering them.

ART. 1812. Corporations which have a judicial personality may only make compromises in the manner and with the requisites necessary to alienate their property.

ART. 1813. A civil action arising from a crime may be compromised, but the public action for the imposition of the legal penalty shall not be extinguished thereby.

ART. 1814. No compromise can be made with regard to the civil status of persons, nor with regard to matrimonial questions, nor future support.

ART. 1815. A compromise shall only include the objects specifically determined therein or which from a necessary inference from its words must be considered as included therein.

A general renunciation of rights shall be understood as including only those relating to the question with regard to which the compromise has been made.

ART. 1816. A compromise has, with regard to the parties, the same authority as *res adjudicata;* but summary proceedings shall not be proper except when the fulfillment of a judicial compromise is in question.

ART. 1817. A compromise, in which error, deceit, violence, or forgery of documents is involved, shall be subject to the provisions of article 1265 of this code.

Nevertheless, one of the parties can not set up an error of fact against the other, if by reason of a compromise the latter has withdrawn from a suit already begun.

ART. 1818. The discovery of new instruments is not a cause f annulment or rescission of a compromise, if there has been n faith.

ART. 1819. If a suit having been decided by a final judgment promise with regard to the same should take place, because any parties interested did not know of the existence of said final ment, he may demand that the compromise be rescinded.

Ignorance of a revocable judgment is not a cause for controver compromise.

CHAPTER SECOND.

Arbitration.

ART. 1820. The same persons who can compromise may also s their contentions to a third person for decision.

ART. 1821. The provisions of the preceding chapter with reg compromises are applicable to arbitrations.

With regard to the form of procedure in arbitrations and t extent and effects thereof, the provisions of the law of civil proc shall be observed.

TITLE XIV.

Security.

CHAPTER FIRST.

Nature and extent of security.

ART. 1822. By security a person binds himself to pay or perfor a third person in case the latter should fail to do so.

If the surety binds himself jointly with the principal debto provisions of section fourth, chapter third, title first, of this book be observed.

ART. 1823. The security may be conventional, legal, or judicial tuitous, or for a valuable consideration.

It may also be constituted, not only in favor of the principal d but in favor of the other surety, either with the consent, ignorance even against the opposition of the latter.

ART. 1824. Security can not exist without a valid obligation.

Nevertheless, an obligation, the nullity of which may be claim virtue of an exception purely personal on the part of the oblig that of minority, may be the subject of security.

From the provisions of the preceding paragraph is excepted th of a loan made to a minor not emancipated.

ART. 1825. Security may also be given as a guaranty for future the amount of which is not yet known, but no action can be br against the surety until the debt is determined.

ART. 1826. A surety may bind himself to less but not to more the principal debtor as to quantity as well as to the burden of th ditions.

Should he have bound himself for more, his obligation shall be reduced to the limits of that of the debtor.

ART. 1827. Security is not presumed; it must be express and can not be extended further than that specified therein.

If it be simple and indefinite it shall include not only the principal obligation but all its accessories, including the costs of the suit, it being understood, with regard to the latter, that the surety shall only be liable for those incurred after he has been asked to pay.

ART. 1828. A party who is bound to give security must present a person having capacity to bind himself, and with sufficient property to answer for the obligation which he guarantees. The surety shall be understood as subject to the jurisdiction of the judge of the place where this obligation is to be fulfilled.

ART. 1829. If the surety should become insolvent the creditor may demand another who has all the qualifications required by the preceding article. The case is excepted where the creditor has required and stipulated that a specified person should be the surety.

CHAPTER SECOND.

Effects of security.

SECTION FIRST.—*Effects of security between surety and creditor.*

ART. 1830. The surety can not be compelled to pay a creditor until application has been previously made of all the property of the debtor.

ART. 1831. This application can not take place—

1. If the surety has expressly renounced it.
2. If he has jointly bound himself with the debtor.
3. In case of bankruptcy of the debtor.
4. When the debtor can not be judicially sued within the Kingdom.

ART. 1832. In order that the surety may avail himself of the benefit of a levy against the principal he must require it of the creditor as soon as the latter may sue for payment, and determine the property of the debtor which can be sold within Spanish territory and which may be sufficient to cover the amount of the debt.

ART. 1833. After the surety has fulfilled all the conditions of the preceding article, the creditor who is negligent in making a levy upon the property of the principal designated, shall be liable to the extent of the value of said property for the insolvency of the debtor arising from said negligence.

ART. 1834. A creditor may cite the surety should he institute the claim against the principal debtor, but the benefit of a levy against the principal shall always be reserved, even when a judgment is rendered against both of them.

ART. 1835. A compromise made by a surety with a creditor shall have no effect with regard to the principal debtor.

Neither shall that made by the latter have any effect with regard to a surety against his will.

ART. 1836. A surety of a surety enjoys the benefit of a levy regard to the surety as well as to the principal debtor.

ART. 1837. Should there be several sureties but only one debto the same debt, the liability therefor shall be divided among then The creditor can claim from each surety nothing but the proper por which he may have to pay, unless the joint liability has been expre stipulated.

The benefit of division against the co-sureties ceases in the s cases and for the same reasons as that for levy against the princ debtor.

SECTION SECOND.—*Effects of security between the debtor and the su*

ART. 1838. A surety who pays for a debtor shall be indemnified the latter.

The indemnity consists of—

1. The total amount of the debt.

2. Legal interest on the same from the day on which the payn may have been communicated to the debtor, even when it did not duce interest for the creditor.

3. The expenses incurred by the surety after the latter has infor the debtor that he has been sued for payment.

4. Losses and damages, when proper.

The provisions of this article shall be valid, even should the secu have been given without knowledge of the debtor.

ART. 1839. By virtue of such payment the surety is subrogate all the rights which the creditor had against the debtor.

Should the surety have compromised with the creditor, he can demand of the debtor more than that which he has really paid.

ART. 1840. If the surety pays without informing the debtor, latter may use against him all the exceptions which he could have up against the creditor at the time of making the payment.

ART. 1841. If the debt was for a term and the surety paid it be it was due, he can not require the debtor to reimburse him until period has expired.

ART. 1842. If the surety has paid without notifying the debtor, the latter, not having knowledge of the payment, also pays it, the mer has no remedy against the debtor, but only against the credito

ART. 1843. The surety, even before paying, may proceed against principal debtor—

1. When he is sued for the payment.

2. In case of bankruptcy or insolvency.

3. When the debtor has bound himself to relieve him from the se rity within a specified term, and this term has expired.

4. When the debt has become demandable because the term in wh it should have been paid has expired.

5. At the end of ten years, when the principal obligation has not a fixed term for its expiration, unless it be of such a nature that it can not be extinguished except in a period greater than ten years.

In all these cases the action of the surety tends to obtain his release from the security or a guaranty to defend him against any proceedings of the creditor and from the danger of insolvency of the debtor.

SECTION THIRD.—*Effects of security as between the cosureties.*

ART. 1844. When there are two or more sureties for the same debtor and for the same debt, the one who has paid it may demand of each of the others the part which he or they should proportionally have paid.

If any one of them should be insolvent, his part shall be paid by all in the same proportion.

In order that the provision of this article may be applicable, the payment must have been made by virtue of judicial proceedings or when the principal debtor should have made an assignment or is a bankrupt.

ART. 1845. In the case of the preceding article the cosureties may set up against the one who paid, the same exceptions which would have pertained to the principal debtor against the creditor, and which may not be purely personal on the part of the same debtor.

ART. 1846. A subsurety, in case of the insolvency of the surety for whom he bound himself, remains liable to the cosureties in the same terms as the surety was bound.

CHAPTER THIRD.

Extinguishment of security.

ART. 1847. The obligation of the surety shall expire at the same time as that of the debtor, and for the same causes as all other obligations.

ART. 1848. A merger which takes place in the person of the debtor and of the surety when one of them inherits from the other does not extinguish the obligation of the subsurety.

ART. 1849. If the creditor voluntarily accepts real estate or any other goods in payment of the debt, even should he afterwards lose them on account of eviction, the surety shall be released.

ART. 1850. Liberation, made by a creditor of one of the sureties without the consent of the others, shall benefit all the others to the extent of the portion of the surety to whom it has been granted.

ART. 1851. The extension granted to the debtor by the creditor, without the consent of the surety, extinguishes the security.

ART. 1852. The sureties, even when they are joint, shall be released from their obligation whenever by any act of the creditor they can not be subrogated to the rights, mortgages, and privileges of the same.

ART. 1853. A surety may set up against the creditor all the exceptions which pertain to the principal debtor and which may be inherent to the debt; but not those which may be purely personal to the debtor.

CHAPTER FOURTH.

Legal and judicial security.

ART. 1854. Sureties, who must act by provision of law or by
cial decree, shall possess the qualifications prescribed in article

ART. 1855. If the person who is bound to give security, in th
of the preceding article, should not obtain it, a pledge or m
which may be considered sufficient to cover his obligation s
admitted in place thereof.

ART. 1856. A judicial surety can not demand a levy on the p
of the principal debtor.

A subsurety who offers security for a surety, in the same ca
not demand either a levy on the property of the debtor nor on
the surety.

TITLE XV.

Contracts of pledge, mortgage, and antichresis.

CHAPTER FIRST.

Provisions common to pledge and mortgage.

ART. 1857. The following are essential requisites of the contr
pledge and of mortgage:

1. That they be constituted to secure the fulfillment of a pr
obligation.

2. That the thing pledged or mortgaged is owned by the pers
pledges or mortgages it.

3. That the persons who constitute the pledge or mortgage ha
free disposition of their property, and, should they not have i
they are legally authorized for the purpose.

Third persons, strangers to the principal obligation, may secu
latter by pledging or mortgaging their own property.

ART. 1858. It is also essential in these contracts that when th
cipal obligation is due, the things of which the pledge or mo
consists may be alienated to pay the creditor.

ART. 1859. A creditor can not appropriate to himself the
given in pledge or mortgage, nor dispose of them.

ART. 1860. The pledge and the mortgage are indivisible, even
debt should be divided among the legal representatives of the
or of the creditor.

Therefore, an heir of the debtor who may have paid a part
debt can not request that the pledge or mortgage be proporti
extinguished as long as the debt has not been paid in full.

Neither can the heir of the creditor, who received his part
debt, return the pledge nor cancel the mortgage to the prejudice
other heirs who have not been paid.

From these provisions is excepted the case in which there are several things given in mortgage or pledge and each of them secures only a specified part of the credit.

The debtor in such case shall be entitled to have the pledge or mortgage extinguished in proportion as he pays the part of the debt for which each thing is specially liable.

ART. 1861. Contracts of pledge and mortgage may secure all kinds of obligations, either pure or subject to conditions precedent or subsequent.

ART. 1862. A promise to constitute a pledge or mortgage gives rise only to a personal action among the contracting parties, without prejudice to the criminal liability which a person incurs who defrauds another, offering in pledge or mortgage as unincumbered things which he knew were incumbered, or pretending to be the owner of things which do not belong to him.

CHAPTER SECOND.

Pledge.

ART. 1863. Besides the requisites mentioned in article 1857 it is necessary, in order to constitute the contract of pledge, that the pledge should be placed in possession of the creditor or of a third person by common consent.

ART. 1864. All personal property which is the object of commerce may be given as a pledge, provided it be capable of being possessed.

ART. 1865. A pledge shall not be effective against a third person, when evidence of its date does not appear in a public instrument.

ART. 1866. A contract of pledge gives a right to the creditor to retain the thing in his possession or in that of the third person to whom it may have been delivered until his credit is paid.

If, while the creditor retains the pledge, the debtor should contract with him another debt demandable before the first one has been paid, the former may extend the retention until both credits are paid him, even should it not have been stipulated that the pledge should be subject to the security for the second debt.

ART. 1867. The creditor must take care of the thing given in pledge with the diligence of a good father of a family; he has a right to recover the expenses incurred for its preservation and is liable for its loss or deterioration, in accordance with the provisions of this code.

ART. 1868. If the pledge produces interest, the creditor shall set off that collected by him against that due him, and if none is due him, or to the extent that it exceeds that legally due, he shall charge it to the principal.

ART. 1869. As long as the thing given in pledge is not taken by eminent domain, the debtor continues to be the owner thereof.

Nevertheless, the creditor may exercise the actions which pertain to the owner of the thing pledged, in order to reclaim or defend it against a third person.

ART. 1870. The creditor can not make use of a thing given in pl without the authorization of the owner, and should he do so, or mi said thing in any other manner, the latter may demand that it be r a depositum.

ART. 1871. The debtor can not demand the restitution of the t pledged, against the will of the creditor, until he has paid the debt its interest, with the expenses, in a proper case.

ART. 1872. A creditor to whom the debt has not been paid at proper time may proceed, before a notary, to alienate the pledge. alienation must necessarily take place at public auction, and with citation of the debtor and of the owner of the pledge, in a proper If the pledge should not have been alienated at the first auction a ond one, with the same formalities, may be held; and should no r be attained the creditor may become the owner of the pledge. In case he shall be obliged to give a discharge for the full amount o credit.

If the pledge should consist of securities quoted on exchange, shall be sold in the manner prescribed in the code of commerce.

ART. 1873. With regard to pawnshops and other public institut which by their character or special purpose loan money on pledge special laws and regulations relating thereto, and subsidiarily the visions of this title, shall be observed.

CHAPTER THIRD.

Mortgage.

ART. 1874. The following property only can be the subject of a m gage contract:

1. Real property.

2. Property rights in real estate which can be alienated in acc ance with law.

ART. 1875. Besides the requisites mentioned in article 1857, indispensable, in order that the mortgage may be validly constitu that the instrument in which it is created be entered in the regist property.

The persons in whose favor the law creates a mortgage shall hav other right than to demand the execution and entry of the instru in which the mortgage may be constituted, without prejudice to provisions of the mortgage law in favor of the State, provinces, towns for the amount of the last year's taxes, and in favor of underwriters for the premium of the insurance.

ART. 1876. A mortgage directly and immediately subjects the p erty on which it is imposed, whoever its possessor may be, to the fu ment of the obligation for the security of which it was created.

ART. 1877. A mortgage includes the natural accessions, impr ments, growing fruits, and rents not collected when the obligatio due, and the amount of the indemnities granted or due the owne

the underwriters of the property mortgaged or by virtue of the exercise of eminent domain by reason of public utility, with the declarations, amplifications, and limitations established by law, in case the estate continues in the possession of the person who mortgaged it, as well as when it passes into the hands of a third person.

ART. 1878. A mortgage credit may be alienated or assigned to a third person, wholly or partially, with the formalities required by law.

ART. 1879. A creditor may demand from the third possessor of the property mortgaged the payment of the part of the credit secured with what the latter may possess, in the terms and with the formalities established by law.

ART. 1880. The form, extension, and effects of the mortgage, as well as all that relating to its creation, modification, and extinction, and all that which may not have been included in this chapter, shall be subject to the provisions of the mortgage law, which continues in force.

CHAPTER FOURTH.

Antichresis.

ART. 1881. By antichresis a creditor acquires a right to receive the fruits of real property of his debtor, with the obligation to apply them to the payment of interest, if due, and afterwards to the principal of his credit.

ART. 1882. A creditor is obliged to pay the taxes and charges which burden the estate, unless there is an agreement to the contrary.

He shall also be obliged to pay the expenses necessary for its preservation and repair.

From the fruits there shall be deducted the sums which he may employ for both purposes.

ART. 1883. The debtor can not recover the enjoyment of the real property without previously paying in full what he owes to his creditor.

But the latter, in order to free himself from the obligations imposed on him by the preceding article, may always compel the debtor to reenter upon the enjoyment of the estate, unless there be an agreement to the contrary.

ART. 1884. The creditor does not acquire the ownership of the real property by nonpayment of the debt within the term agreed upon.

Any stipulation to the contrary shall be void. But in this case the creditor may demand, in the manner prescribed in the law of civil procedure, the payment of the debt or the sale of the realty.

ART. 1885. The contracting parties may stipulate that the interest of the debt be set off against the fruits of the estate given in antichresis.

ART. 1886. The last paragraph of article 1857, the second paragraph of article 1866, and articles 1860 and 1861 are applicable to this contract.

TITLE XVI.

Obligations contracted without agreement.

CHAPTER FIRST.

Quasi contracts.

ART. 1887. Quasi contracts are licit and purely voluntary act which the author thereof becomes obligated with regard to a t person, and, sometimes, by which there results a reciprocal obliga between the parties concerned.

SECTION FIRST.—*Management of another's business.*

ART. 1888. A person who voluntarily takes charge of the agenc administration of the business of another, without authorizatio obliged to continue managing the same until the end of the busi and its incidents, or to notify the interested person in order that latter may come to substitute him in his management, should he b a condition to do so for himself.

ART. 1889. An officious manager must fulfill his charge with all diligence of a good father of a family and indemnify for injuries wh through his fault or negligence, may be caused to the owner of property or business he may be managing.

Nevertheless, the courts may reduce the amount of the indemn according to the circumstances of the case.

ART. 1890. If the manager should delegate all or some of the du of his charge to another person, he shall answer for the acts of delegate, without prejudice to the direct obligation of the latte the owner of the business.

The liability of the managers, should there be two or more, shal joint.

ART. 1891. The manager of a business shall be liable for a fortui event, should he undertake risky transactions, which the owner not in the habit of undertaking, or should he have relegated the in ests of the latter in favor of his own business.

ART. 1892. The ratification of the management by the owner of business produces the effects of an express authorization.

ART. 1893. The owner of property or a business who avails him of the advantages of the administration of another, even when he not expressly ratified it, shall be liable for the obligations contrac for his benefit, and he shall indemnify the administrator for the ne sary and useful expenses which he may have incurred and for the lo he may have suffered in the discharge of his duties.

The same obligation shall pertain to said owner when the objec said administration should have been to avoid any imminent or m fest damage, even when no profit results therefrom.

ART. 1894. When, without knowledge of the person who is bound to give support, a stranger supplies it, the latter shall have the right to demand the same from the former, unless it appears that he gave it out of charity, and without the intention of recovering it.

The funeral expenses, in proportion to the status of the person and to the customs of the locality, must be paid by those who during life would have had the obligation to support him. even though the deceased should have left no property.

SECTION SECOND.—*Collection of what is not due.*

ART. 1895. If a thing is received when there was no right to claim it and which, through an error, has been unduly delivered, there arises an obligation to restore the same.

ART. 1896. A person who accepts a payment not due, should he have acted in bad faith, must pay the legal interest when money is involved, or for the fruits collected or which ought to have been collected, if the thing received should produce them.

He shall furthermore be liable for the impairments the thing may have suffered on account of any cause whatsoever and for the damages caused to the person who delivered it, until he recovers it. He shall not be liable for fortuitous events, when they may have affected the things in the same manner should they have been in the possession of the person who delivered them.

ART. 1897. A person, who in good faith should have accepted a payment of a certain and specified thing not due, shall only be liable for the impairment or loss of the latter and its accessories, in so far as he may have enriched himself by it. Should he have alienated it he shall return the price or assign the action to recover it.

ART. 1898. With regard to the payment for improvements and expenses, made by the person who unduly received the thing, the provisions of title fifth of book second shall be observed.

ART. 1899. The person shall be exempted from the obligation of restitution, who, believing in good faith that the payment was made on the account of a legitimate and existing credit, should destroy the title or should allow the action to prescribe, or should abandon the pledges or cancel the guaranties of his right. A person who has unduly made a payment may only address himself to the true debtor or to the sureties with regard to whom the action may still be in force.

ART. 1900. The proof of payment is incumbent upon the person who claims to have made the same. He shall also be obliged to prove the error under which he made it, unless the defendant denies having received the thing claimed from him. In such case, if the plaintiff should have proven the delivery, he shall be released from any further proof. This does not limit the right of the defendant to justify that what he is supposed to have received was due him.

ART. 1901. It is presumed that there was an error in the payment when a thing which was never owed or which was already paid for has been delivered, but the person from whom the return is asked may prove that the delivery was made through liberality or for any other sufficient cause.

CHAPTER SECOND.

Obligations which arise from fault or negligence.

ART. 1902. A person who by an act or omission causes damage to another when there is fault or negligence shall be obliged to repair the damage so done.

ART. 1903. The obligation imposed by the preceding article is demandable, not only for personal acts and omissions, but also for those of the persons for whom they should be responsible.

The father, and on his death or incapacity the mother, is liable for the damages caused by the minors who live with them.

Guardians are liable for the damages caused by minors or incapacitated persons who are under their authority and live with them.

Owners or directors of an establishment or enterprise are equally liable for the damages caused by their employees in the service of the branches in which the latter may be employed or on account of their duties.

The State is liable in this sense when it acts through a special agent, but not when the damage should have been caused by the official to whom properly it pertained to do the act performed, in which case the provisions of the preceding article shall be applicable.

Finally, masters or directors of arts and trades are liable for the damages caused by their pupils or apprentices while they are under their custody.

The liability referred to in this article shall cease when the persons mentioned therein prove that they employed all the diligence of a good father of a family to avoid the damage.

ART. 1904. A person who pays for the damage caused by his employees may recover from the latter what he may have paid.

ART. 1905. The possessor of an animal, or the one who uses the same, is liable for the damages it may cause, even when said animal should escape from him or stray.

This liability shall cease only in case the damage should arise from force majeure or from the fault of the person who may have suffered it.

ART. 1906. The owner of a game preserve shall be liable for the damage caused by the game to the neighboring estates, should he not have done what may have been necessary to avoid the increase of the same or should he have hindered the efforts of the owners of said estates to hunt.

ART. 1907. The owner of a building is liable for the damages which may result from the collapse of the whole or a part thereof, if it should occur through the absence of the necessary repairs.

ART. 1908. The owners shall also be liable for the damages caused—

1. By the explosion of machines which may not have been cared for with due diligence, and for kindling of explosive substances, which may not have been placed in a safe and proper place.

2. By excessive smoke, which may be noxious to persons or properties.

3. By the fall of trees, located in places of transit, when not caused by force majeure.

4. By the emanations of sewers or deposits of infectious matters, when constructed without precautions proper for the place where they are located.

ART. 1909. Should the damages referred to in the two preceding articles arise from defects in construction, the third person who suffers it may only claim damages of the architect, or, in a proper case, of the constructor, within the legal period.

ART. 1910. The head of a family who dwells in a house, or in a part of the same, is liable for the damages caused by the things which may be thrown or which may fall therefrom.

TITLE XVII.

Concurrence and preference of credits.

CHAPTER FIRST.

General provisions.

ART. 1911. A debtor is liable for the fulfillment of his obligations with all his present and future property.

ART. 1912. A debtor may judicially ask from his creditors a reduction in the amount and an extension of time in the payment of his debts, or either of the two things, but the exercise of this right shall not produce judicial effects, except in the cases and in the manner prescribed in the law of civil procedure.

ART. 1913. A debtor, whose liabilities are greater than his assets, and who may have failed to meet his current obligations, must file a petition in bankruptcy (*concurso*) in a competent court, as soon as he is aware of being in such condition.

ART. 1914. A declaration in bankruptcy disqualifies the bankrupt (*concursado*) to administer his property and any other, which by law pertains to him.

He shall be reinstated in his rights, upon the termination of the bankruptcy, if no cause preventing it should appear from the qualification of bankruptcy.

ART. 1915. By the declaration in bankruptcy, all the immature debts of the bankrupt become due.

Should they be paid before the time fixed in the obligation, they shall suffer the discount in proportion to the amount of the legal interest on the money.

ART. 1916. From the date of the declaration in bankruptcy, all the debts of the bankrupt shall cease to bear interest, with the exception of mortgage and pledge credits to the amount of their respective guaranties.

If, after the principal of the debts has been paid, a balance should remain, interest shall be paid, reduced to the legal rate, unless that stipulated is less.

ART. 1917. Settlements, which the debtor and his creditors may judicially agree to, with the formalities of law with regard to the reduction of the amount and extension of time, or in bankruptcy, shall be binding on all the concurrent parties and on those who, having been cited and notified in due form, should not have protested in time. The creditors who, having the right to abstain, should have duly made use of such right, are excepted. The creditors included in articles 1922, 1923, and 1924 have the right to abstain.

ART. 1918. If the settlement for reduction of amount and extension of time is agreed to with creditors of the same class, the legal decision of the majority shall be binding on all, without prejudice to the respective preference of the credits.

ART. 1919. If the debtor should comply with the settlement, his obligations shall be extinguished in the terms stipulated in the same; but, should he fail to comply with the whole or a part of said settlement, the rights of the creditors shall revive for the sums of their original credits which they may not have received, and any of them may demand a declaration in or continuance of bankruptcy.

ART. 1920. Should there be no express stipulation to the contrary between the debtor and the creditors, the latter shall preserve their rights, after the termination of the bankruptcy, to collect from the property which the debtor may subsequently acquire that part of their credits not received.

CHAPTER SECOND.

Classification of credits.

ART. 1921. Credits shall be classified for their graduation and payment in the order and manner specified in this chapter.

ART. 1922. With regard to specified personal property of the debtor, the following are preferred:

1. Credits for the construction, repair, preservation, or for the amount of the sale of personal property which may be in the possession of the debtor to the extent of the value of the same.

2. Those secured by a pledge which may be in the possession of the creditor, with regard to the thing pledged and to the extent of its value.

3. Those guaranteed by a security of goods or securities constituted in a public or commercial establishment with regard to the security and for the value of the same.

4. Credits for transportation, with regard to the goods transported, for the amount of said transportation, expenses and rates of carriage and preservation, until the time of the delivery and for a period of thirty days afterwards.

5. Expenses of boarding with regard to the personal property of the debtor remaining in inns.

6. Credits for seeds and expenses of cultivation and harvesting, advanced to the debtor, with regard to the fruits of the crops to which they were applied.

7. Credits for rents and leases for one year with regard to the personal property of the lessee existing on the estate leased and on the fruits thereof.

If the personal property, with regard to which the preference is allowed, has been surreptitiously removed, the creditor may claim it from the person who has the same, within the term of thirty days counted from the time it was so removed.

ART. 1923. With regard to determined real property and property rights of the debtor, the following are preferred:

1. The credits in favor of the State, with regard to the property of tax payers for the amounts of the last annual assessments, due and not paid, of the taxes which burden the same.

2. The credits of insurers, with regard to the property insured, for the insurance premium for two years, and should the insurance be mutual, for the last two dividends declared.

3. Mortgage and agricultural credits (*refaccionarios*) entered and recorded in the registry of property, with regard to the property mortgaged, or which has been the object of the agricultural loan (*refacción*).

4. Credits, of which a cautionary notice has been made in the registry of property by virtue of a judicial mandate, by reason of attachments, sequestrations, or execution of judgments, with regard to the property entered therein and only with regard to subsequent credits.

5. Agricultural credits not entered nor recorded with regard to the real estate to which the agricultural loan (*refacción*) relates, and only with regard to other credits different from those mentioned in the four preceding numbers.

ART. 1924. With regard to the other personal and real property of the debtor, the following credits are preferred:

1. Credits in favor of the province or municipality for the taxes of the last year, due and unpaid, not included in No. 1 of article 1923.

2. Those due—

A. For judicial expenses and those of administration of the bankruptcy for the common interest of the creditors, made with the proper authorization or approval.

B. For the funeral expenses of the debtor, according to the customs of the place, and also those of his wife and of his children, under their parental authority should they have no property of their own.

C. For expenses of the last illness of said persons, incurred du the last year, counted up to the day of their death.

D. For daily wages and salaries of employees and domestic serv for the last year.

E. For advances made to the debtor for himself and his family, stituted under his authority, in provisions, clothing, or shoes for same period of time.

F. For income for support during the proceedings in bankru unless they are based on mere beneficence.

3. Credits which without a special privilege appear—

A. In a public instrument.

B. In a final judgment, should they have been the object of litigat

These credits shall have preference among themselves accordin the priority of dates of the instruments and of the judgments.

ART. 1925. Credits of any other kind or for any other considera not included in the preceding article shall have no preference.

CHAPTER THIRD.

Priority of payment of credits.

ART. 1926. Credits which enjoy preference with regard to cer personal property exclude all the others to the extent of the valu the personal property to which the preference refers.

When two or more creditors claim preference with regard to cer personal property, the following rules shall be observed as to prio of payment:

1. Credits secured by a pledge exclude all others to the extent of value of the thing given in pledge.

2. In case there is a security, should the latter be legally constitu in favor of more than one creditor, the priority between them shall determined by the order of the dates of the execution of the guara

3. Credits for advances for seeds, expenses of cultivation, and l vesting, shall be preferred over those for rents and leases, with reg to the fruits of the crop for which they were incurred.

4. In all other cases the value of the personal property shall be tributed pro rata among the credits which enjoy special prefere with regard to the same property.

ART. 1927. Credits which enjoy preference with regard to cert real property or property rights exclude all others for their amou to the extent of the value of the real estate or property rights to wh the preference refers.

If two or more credits affecting certain real property or prope rights should concur, the following rules shall be observed with reg to their priority:

1. Those mentioned in Nos. 1 and 2 of article 1923 shall be preferr according to their order, to those included in the other numbers of same article.

2. Mortgages and agricultural credits entered or recorded, mentioned in No. 3 of said article 1923, and those included in No. 4 of the same, shall enjoy priority among themselves according to the priority of the respective entries or record in the registry of property.

3. Agricultural credits not recorded or entered in the registry, referred to in No. 5 of article 1923, shall enjoy preference among themselves in the inverse order of their priority.

ART. 1928. The residue of the estate of a debtor, after the credits which enjoy preference with regard to certain property, personal or real, have been paid, shall become part of the free property which he may possess for the payment of the other credits.

Those which enjoy preference with regard to certain property, personal or real, and which should not have been totally paid with the amount of such property, shall be paid with regard to the deficit in the order and place pertaining thereto, according to their respective characters.

ART. 1929. Credits which have no preference with regard to certain property, and those which have preference for the amount not collected, or when the right of preference should have prescribed, shall be paid according to the following rules:

1. In the order established in article 1924.

2. Those preferred by dates, according to their order, and those which have a common date, pro rata.

3. Common credits, referred to in article 1925, without consideration of their dates.

TITLE XVIII.

Prescription.

CHAPTER FIRST.

General provisions.

ART. 1930. Ownership and other property rights are acquired by prescription in the manner and under the conditions specified by law.

Rights and actions, of any kind whatsoever, also are extinguished by prescription in the same manner.

ART. 1931. Persons qualified to acquire property or rights by other legal means may also acquire the same by prescription.

ART. 1932. Rights and actions shall extinguish by prescription to the prejudice of all kinds of persons, including judicial persons, in the terms prescribed by law.

Persons incapacitated to administer their property shall always retain the right to sue their legal representatives whose negligence may have been the cause of the prescription.

ART. 1933. Prescription acquired by a coproprietor or owner in common benefits all the others.

ART. 1934. Prescription produces its judicial effects in favor against the inheritance, before the latter has been accepted, and du the time granted to make an inventory and for deliberation.

ART. 1935. Persons with the capacity to alienate may renounce prescription acquired, but not the right to prescription in the futur

Prescription shall be understood as renounced in an implied mar when the renunciation arises from facts which lead to the supposi that the right acquired has been abandoned.

ART. 1936. All things which are the object of commerce are cap of prescription.

ART. 1937. Creditors and any other person interested in validat a prescription may benefit thereby, notwithstanding the express implied renunciation of the debtor or owner.

ART. 1938. The provisions of this title shall be understood with prejudice to what may be established in this code or in special la with regard to specified cases of prescription.

ART. 1939. Prescription, which began to run before the publicat of this code, shall be governed by the prior laws; but if, after this c became operative, all the time required in the same for prescription elapsed, it shall be effectual, even if according to said prior law longer period of time may be required.

CHAPTER SECOND.

Prescription of ownership and of other property rights.

ART. 1940. For ordinary prescription of ownership and other pr erty rights, it is necessary to possess things in good faith and unde proper title, during the time specified by law.

ART. 1941. Possession must be in the capacity of an owner, pub peaceful, and uninterrupted.

ART. 1942. Acts of a possessory character, performed by virtue o license, or by mere tolerance on the part of the owner, are of no eff for establishing possession.

ART. 1943. For the effects of prescription, possession is interrup either naturally or civilly.

ART. 1944. Possession is interrupted naturally, when, for any ca whatsoever, it ceases for more than one year.

ART. 1945. Civil interruption is caused by a judicial citation of t possessor, even should it be by a mandate of an incompetent judge.

ART. 1946. The judicial citation shall be considered as not made a shall not cause interruption:

1. If it should be void by reason of the absence of legal formalities

2. If the plaintiff should withdraw his complaint or should per the proceedings to lapse.

3. If the suit against the possessor should be dismissed.

ART. 1947. Civil interruption shall also take place by an action avoid litigation, provided that within two months from its celebrati

a complaint as to possession or ownership of the thing contested be presented to the judge.

ART. 1948. Any express or implied acknowledgement which the possessor may make with regard to the right of the owner also interrupts possession.

ART. 1949. Against the title recorded in the registry of property, the ordinary prescription of ownership or of property rights shall not obtain to the prejudice of a third person, except by virtue of another title similarly recorded, and the time shall begin to run from the date of the entry of the latter.

ART. 1950. Good faith of the possessor consists in his belief that the person from whom he received the thing was the owner of the same, and could convey his title.

ART. 1951. The conditions of good faith, required for possession in articles 433, 434, 435, and 436 of this code, are equally necessary for the determination of said requisite in the prescription of ownership and of other property rights.

ART. 1952. By a proper title is understood that which legally suffices to transfer the ownership or property right, the prescription of which is in question.

ART. 1953. The title for prescription must be true and valid.

ART. 1954. A proper title must be proven; it never can be presumed.

ART. 1955. The ownership of personal property prescribes by uninterrupted possession in good faith for a period of three years.

The ownership of personal property also prescribes by uninterrupted possession for six years, without the necessity of any other condition.

The provisions of article 464 of this code shall be observed with regard to the rights of the owner to recover the personal property lost or of which he may have been illegally deprived, and also with regard to those acquired at an auction, on exchanges, at fairs or markets, or from a merchant legally established or customarily engaged in the traffic of similar objects.

ART. 1956. Personal property stolen or robbed can not prescribe to the persons who stole or robbed the same, nor to their accomplices, or harborers, unless the crime or misdemeanor or their penalties and the action to demand the civil liability, arising from the crime or misdemeanor, have prescribed.

ART. 1957. Ownership and other property rights in real property shall prescribe by possession for ten years as to persons present, and for twenty years with regard to those absent, with good faith and with a proper title.

ART. 1958. For the purposes of prescription, a person who resides in a foreign country or beyond the seas shall be considered as absent.

If said person was present during part of the time and absent during another part, every two years of absence shall be considered as one year to complete the ten years of the time required to be present.

Absence which is not for a whole and continuous year shall not be considered in the computation.

ART. 1959. Ownership and other property rights in real property shall also prescribe by uninterrupted possession of the same for thirty years without the necessity of title nor good faith and without distinction between present and absent persons, with the exception mentioned in article 539.

ART. 1960. In the computation of the time necessary for prescription, the following rules shall be observed:

1. The actual possessor may complete the time necessary for prescription by adding to his time that of his constituent.

2. It is presumed that the actual possessor, who may have been a possessor at a former period, has continued to be such possessor during the time intervening, unless there is proof to the contrary.

3. The day on which the time begins to run is considered as a whole day, but the last day must be wholly completed.

CHAPTER THIRD.

Prescription of actions.

ART. 1961. Actions are prescribed by the mere lapse of time specified by law.

ART. 1962. Real actions with regard to personal property prescribe after the lapse of six years from the loss of possession, unless the possessor may have during a shorter term acquired the ownership in accordance with article 1955, and with the exception of the cases of loss and public sale, and those of theft and robbery, in which cases the provisions of the third paragraph of said article shall be observed.

ART. 1963. Real actions with regard to real property prescribe after thirty years.

This provision is understood without prejudice to the prescriptions relating to the acquisition of ownership or of property rights by prescription.

ART. 1964. A mortgage action prescribes after twenty years, and those which are personal and for which no special term of prescription is fixed, after fifteen years.

ART. 1965. Among coheirs, coowners, or proprietors of adjacent estates, the action to demand the division of the inheritance, of the thing held in common, or the survey of the adjacent properties does not prescribe.

ART. 1966. Actions to demand the fulfillment of the following obligations prescribe in five years:

1. For the payment of income for support.

2. For the payment of rents, whether derived from rural or from town property.

3. That of any other payments which should have been made annually or in shorter periods.

ART. 1967. Actions for the fulfillment of the following obligations shall prescribe in three years:

1. For the payment of judges, lawyers, registers, notaries public, experts, agents, and clerks for their charges and fees and the expenses and disbursements incurred by them in the discharge of their duties or offices in the matters to which the obligations refer.

2. For payments to apothecaries for medicines which they have supplied; to professors and teachers for their salaries and stipends for the instruction they have given, or for the exercise of their profession, art, or trade.

3. For the payment of mechanics, servants, and laborers the amounts due for their services, and for the supplies or disbursements they may have incurred with regard to the same.

4. For the payment of board and lodging to innkeepers, and to traders for the value of goods sold to others who are not traders, or who, being such, are engaged in a different trade.

The time for the prescription of actions referred to in the three preceding paragraphs shall be counted from the time the respective services have ceased to be rendered.

ART. 1968. The following prescribe in one year:

1. Actions to recover or retain possession.

2. Actions to demand civil liability for grave insults or calumny, and for obligations arising from the fault or negligence, mentioned in article 1902, from the time the aggrieved person had knowledge thereof.

ART. 1969. The time for the prescription of all kinds of actions, when there is no special provision to the contrary, shall be counted from the day on which they could have been instituted.

ART. 1970. The time for the prescription of actions, the object of which is to demand the fulfillment of obligations with regard to principal with interest or rent, runs from the last payment of rent or interest.

The same shall be understood with regard to the principal of the consignative or transferable annuity.

In emphyteutic and reservative annuities the time for the running of the prescription shall be counted from the last payment of the pension or income.

ART. 1971. The period for the prescription of actions to demand the fulfillment of obligations declared in a judgment shall begin from the day the judgment became final.

ART. 1972. The term for the prescription of actions to demand the rendering of accounts runs from the day on which those who should have rendered them ceased in their charges.

That pertaining to the action for the balance of accounts, from the date on which the latter was acknowledged by agreement of the parties interested.

ART. 1973. Prescription of actions is interrupted by their institution before the courts, by extrajudicial claim of the creditor, and by any act of acknowledgment of the debt by the debtor.

ART. 1974. Interruption of prescription of actions in joint ob
equally benefits or injures all the creditors or debtors.

This provision is likewise applicable with regard to the he
debtor in all kinds of obligations.

In obligations in common, when the creditor does not claim
of the debtors more than the part pertaining to him, the pre
is not interrupted for that reason with regard to the other cod

ART. 1975. Interruption of the prescription against the
debtor by suit for debt shall also lie against his surety;
arising from extrajudicial claims of the creditor or private
edgments of the debtor shall not prejudice said surety.

FINAL PROVISIONS.

ART. 1976. All legal compilations, uses, and customs whic
tute the common civil law in all matters which are the obje
code are hereby repealed, and shall remain without force or effe
as direct obligatory laws or as supplementary law. This pr
not applicable to the laws which have been declared in forc
code.

TRANSITORY PROVISIONS.

Changes introduced in this code prejudicing rights acquire
ing to prior civil legislation shall have no retroactive effect.

In order to apply the proper legislation in the cases not
specified in this code the following rules shall be observed:

1. Rights arising under the legislation prior to this code, ou
ters carried out under its rules, shall be governed by said pric
tion, even if the code should regulate them in another manne
not recognize the same. But if said right is declared for the
in this code, it shall be effective at once, even when the act w
rise thereto may have taken place under the prior legislation,
it does not prejudice other acquired rights having the same o

2. Acts and contracts executed under the existing prior le
and which are valid according to the same, shall produce all th
in accordance therewith, with the limitations established in th
Therefore wills, even when joint; powers of attorney to make
codicils which may have been executed or written before
became operative, shall be valid; and the clause *ad cau*
trusts to apply the property in accordance with the private ins
of the testator, and any other acts permitted by prior legislat
be valid; but the revocation or modification of these acts or
the clauses contained in the same can not take place after
has become operative except by making the will in accord
the same.

3. The provisions of this code which sanction, with a civil
deprivation of rights, acts or omissions which had no sa
prior laws are not applicable to the person who, when the l

in force, should have made the omission or committed the act forbidden by this code.

When the fault may also be punished by prior legislation the mildest provision shall be applied.

4. Actions and rights arising before this code became operative, and not exercised, shall continue with the extension and according to the terms recognized by prior legislation, but shall be subject, with regard to the exercise, duration, and proceedings for enforcing them, to the provisions of this code.

If the exercise of the right or of the action should depend on official proceedings begun under prior legislation, and they should be different from those established in this code, the persons interested may choose either one or the other.

5. Children who have attained the age of 23 years when this code goes into operation are emancipated and not subject to the parental authority, but should they continue to live in the house and at the expense of their parents the latter may retain the usufruct, the administration, and other rights which they may be enjoying in the private property of their children up to the time when the children should be freed from the parental authority according to prior legislation.

6. A father who may have voluntarily emancipated a child, reserving to himself some rights out of his adventitious property, may continue enjoying the same until the time when the son may be freed from the parental authority according to prior legislation.

7. Fathers, mothers, and grandparents who are exercising guardianship of their descendants, can not withdraw the sureties they may have constituted, nor be obliged to constitute them should said sureties not have been given, nor to complete the same should those given be insufficient.

8. Guardians and curators designated under the provisions of prior legislation and subject to the same shall preserve their charges, but subject with regard to their exercise to the provisions of this code.

This rule is also applicable to the possessors, and temporary administrators of the property of other persons, in the cases in which the law establishes the same.

9. Guardianships and curatorships, the definite constitution of which may be pending the decision of the courts at the time this code goes into operation, shall be constituted according to prior legislation, without prejudice to the preceding rule.

10. Municipal judges and *fiscales* shall not proceed to name family councils, ex officio, except with regard to minors whose guardianship may not be definitely constituted when this code becomes operative. If the guardian or curator should already have begun to exercise his charge, the family council shall not be named until one of the persons who has to form a part of the same, or the same guardian or curator existing, requests the constitution of said council, in the meantime the appointment of a protutor being suspended.

11. Proceedings for adoption, those for voluntary emancipation, those for dispensation of law, pending before the government or the courts, shall be continued in accordance with prior legislation, unless the parents or petitioners for such grace should discontinue said proceedings and prefer those established in this code.

12. Rights to the inheritance of a person who may have died, with or without a will, before this code was in force, shall be governed by prior legislation. The inheritance of those who die after that time, with or without a will, shall be awarded and divided according to this code, but complying, in so far as the latter permits it, with the testamentary provisions. Therefore legal portions, betterments, and legacies shall be respected; but their amounts shall be reduced when it is not possible in any other manner to give to each participant in the inheritance the share pertaining to him, according to this code.

13. Cases not directly included in the foregoing provisions shall be determined by applying the principles on which they may be based.

ADDITIONAL PROVISIONS.

1. The presiding judge of the supreme court and those of the territorial audiencias shall forward to the Department of Grace and Justice at the end of each year a report in which, referring to the affairs of which the civil branches may have taken cognizance during the same year, they may point out the deficiencies and doubts that may have arisen in applying this code. They shall state in detail therein the questions and points of law controverted and the articles or omissions of the code which have given rise to doubts of the court.

2. The Secretary of Grace and Justice shall forward these reports and a copy of the civil statistics of the same year to the general codification commission.

3. In view of this data, of the progress made in other countries, which may be utilized in our country, and of the jurisprudence of the supreme court, the codification commission shall draft and forward to the government every ten years the reforms it may be advisable to introduce.

APPENDICES.

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APPENDIX I.

Requisites or formalities necessary before consent by the family council to contract marriage may be given. (*See article 46 of the code.*)

The following requisites shall be necessary when, according to the provisions of article 46 of the civil code, the family council has to give its consent to a minor to contract marriage:

1. The person wishing to contract marriage must prove, by documents or by means of testimony of witnesses to the judge of his domicile: That he has neither a father nor a mother, paternal nor maternal grandparents, or that they are legally or physically incapacitated to give their consent; that the residence of said parents or grandparents is unknown; or, finally, that they are in countries so remote that it would take several months to communicate with them.

2. The proceedings shall then be forwarded to the department of public prosecution in order that within the period of three days the latter may state if it considers them complete or suggest the proceedings which, in its opinion, should be had.

3. After the proceedings have been returned by the department of public prosecution and completed, if proper, the judge shall issue an order calling the family council, which shall proceed in the manner prescribed in articles 304 et seq. of the civil code.

APPENDIX II.

Record of canonical marriages in the civil registry. (*See article 88 of the code.*)

INSTRUCTIONS.

For the execution of articles 77, 78, 79, and 82 of the civil code, with regard to the recording of canonical marriages in the civil registry, and of the decrees of annullment or of divorce of the same.

ARTICLE. 1. The record of canonical marriages shall be made in the office of the civil registry under the jurisdiction of which is situated the parish whose rector has himself, or through a delegate, celebrated the marriage.

ART. 2. A marriage *in articula mortis* contracted by military men in the field far from the Spanish territory, or those contracted on the high seas, shall be recorded in the office of the registry in the jurisdiction of which the husband is known to have his domicile, or in default thereof, that of the wife. Should neither of them have any known domicile, the marriage shall be recorded in the office of the general direction.

ART. 3. The officials in charge of this office shall draft these entries in accordance with the formalities established by the law of the civil registry and these instructions, without being permitted to postpone or refuse the recording of canonical marriages or the transcription of the marriage certificate, in a proper case.

ART. 4. Those in charge of the registry shall keep in packages, and in the manner prescribed in articles 28 and 29 of the regulations of the civil registry, all the instruments, communications, and documents relating to canonical marriages, the celebration of which may have been communicated to them in due form, or the certificates of which may have been copied.

ART. 5. In order to comply with the provisions of article 77 of the civil code, the contracting parties shall advise the municipal judge, at least twenty-four hours in advance, of the day, hour, and place where the canonical marriage is to be celebrated. This notification shall be written on common paper, signed by the contracting parties, and should they or one of them not be able to do so by a neighbor at his or their request, and it shall be drafted in the terms specified in Form A. The written notification may be presented by the contracting parties, by either of them or by their respective agents, even though the authorization be verbal.

ART. 6. The municipal judge or he who performs the duties of the same, shall deliver the proper receipt to the person presenting the notification, and should he not do so he shall incur a fine of not more than 100 pesetas nor less than 20. (See Form B.) He shall at the same time designate the official who, as his delegate, is to be present at the celebration of the marriage, should he for any reason whatsoever not be able to perform this duty, and shall communicate it in due time to the person designated so that he may attend.

ART. 7. The municipal judge may delegate the following persons to discharge his duty of attending the celebration of a marriage: Those who by reason of their office legally substitute him in case of vacancy, absence, or incapacity; the municipal fiscal; the secretary of the court and his substitute; a notary of the judicial district; the mayor of the ward within the limits of which the marriage is to take place, or any other person who merits the confidence of the municipal judge.

ART. 8. After the notification to the municipal judge has been acknowledged by the presentation of the receipt, his nonattendance nor that of his delegate shall be no obstacle to the celebration of the canonical marriage and to the transcription of the marriage certificate according to the provisions of article 77 of the civil code.

ART. 9. After the celebration of the marriage has been concluded, the municipal judge shall make the proper memorandum in the respective book of the registry, should he have the same with him, and otherwise, on a piece of white paper, on which he shall state the following circumstances, in view of the data which the contracting parties must previously submit to him:

1. The place, day, hour, month, and year on which the marriage has taken place.
2. The name, surname, and ecclesiastical rank of the priest celebrating the marriage.
3. The names, paternal and maternal surnames, nativity, profession or trade, and domicile of the contracting parties.
4. The names, paternal and maternal surnames, and nativity of the parents, stating if the contracting parties are legitimate or natural children.
5. The names, surnames, and residence of the witnesses.

Mention shall also be made, if known, first, of the name and surnames, status, nativity, and profession of the proxy, if the marriage is to be thus contracted, and the date, place, and notary before whom the power was executed; second, the date of the permission or request for advice required by the civil code when proper; and, third, if one of the contracting parties is widowed, the name and surname of the deceased spouse, as well as the date and place of death.

The memorandum shall be signed by the contracting parties and by the witnesses, and for a person who can not do so, by another at his request, and by the municipal judge. (See Form C.)

ART. 10. In addition to the circumstances enumerated in the preceding article there may be included in the memorandum, should the contracting parties request it, those mentioned in Nos. 1, 9, and 10, of article 67, of the law of the civil registry, the declaration of the contracting parties being sufficient, with the exception of what is expressed in No. 9, which must be proved by the instruments required by the law of the registry and its regulations. The municipal judges shall apply to this kind of records the provisions of No. 4, of article 20, of the law of the registry.

ART. 11. If a delegate of the municipal judge should have attended the celebration of the marriage, said official must draft, after the ceremony, the proper memorandum on a sheet of common paper which may be printed, and state in the same all the circumstances mentioned in the two preceding articles. (See form D.)

ART. 12. The official who may have attended the celebration of the marriage as a delegate shall forward the memorandum referred to in the preceding article, within the next twenty-four hours, to the office of the civil registry.

ART. 13. The memorandum drafted on common paper by the municipal judge, should he have attended the celebration of the marriage, as well as the one drawn up by the delegate, if the latter should have represented the former in this ceremony, shall be literally copied into the proper book, stating in the entry the date of the same, the number of the bundle in which the original has been filed, and the name of the municipal judge and that of the secretary, who shall authenticate the entry referred to, with their signatures and the seal of the court. (See Form E.)

At the time of copying the memoranda the municipal judge may add the circumstances mentioned in article 10, in the terms therein stated.

ART. 14. At the foot of the memoranda, when recorded, the following note shall be stamped: This memorandum is recorded in liber ———, folio ———, number ———, of the section of marriages of this civil registry. (Date and signature of the judge, and of the secretary, and seal of the court.)

ART. 15. The certificates of canonical marriages, celebrated without the attendance of the municipal judge or his delegate, shall be literally copied in the civil registry. The record may be requested by the contracting parties, their parents, or any other person interested, in person or through an agent, even though the mandate be verbal. The municipal judge shall order that the record of the certificate of marriage take place immediately, stating if the contracting parties have given or not the proper notification to the court in order to exact the proper liability, and for the purposes of the third and fourth paragraphs of article 77 of the civil code.

In this record there shall be stated: 1, the place, hour, day, month, and year it takes place; and 2, the name and surname of the official in charge of the registry, as well as those of the secretary. In this record there may also be stated, even though not appearing in the marriage certificate, should the interested parties request it, the circumstances mentioned in Nos. 1, 9, and 10 of articles 67 of the law on the civil registry, in the manner prescribed in article 8 of these instructions. (See form F.)

ART. 16. At the foot of the marriage certificate which is to be filed there shall be placed a note in the following form: "This certificate is recorded in the civil registry under my charge, liber ———, folio ———, number ———, of the section of marriages." (Date and signatures of the judge and of the secretary, and seal.)

ART. 17. The record of a marriage *in articulo mortis* may be requested when the competent official of the State did not attend its celebration, by either of the spouses, their parents, or persons interested in them, or the proxy even though the mandate may have been verbal, presenting the proper certificate of marriage. The record shall contain, in addition to all the circumstances referred to in article 15, the date of the presentation of the certificate in the registry.

ART. 18. The official in charge of the civil registry shall enter, at the instance of any legitimate party, the final judgments by which the ecclesiastical courts may have declared the annulment or divorce in canonical marriages, also making the marginal notes of reference in the proper records.

ART. 19. The doubts arising from the fulfillment of articles 77, 78, 79, and 82 of the civil code, in so far as they refer to the entry of canonical marriages and of the provisions included in these instructions, shall be submitted by the municipal judges in a clear and precise communication to the proper judges of first instance. Should the latter in their

turn be in doubt, they shall forward the proper consultation to the general direction of civil property and notarial registries.

In no case can the record or transcription of a marriage be suspended by reason of the doubts with regard to which the judges should think it necessary to consult.

The decisions which the general direction may render on the doubts submitted by the judges of first instance shall be published in the *Gaceta de Madrid*, always omitting the name of the interested party.

MADRID, *April 26, 1889.*

Approved.

CANALEJAS Y MÉNDEZ.

FORM A.

Written declaration of those about to contract a canonical marriage.

(Article 5.)

To his honor the municipal judge of ——— ———:

Mr. ——— ———, a native of ——— ———, municipal district of ———, province of ———, ——— years of age, single, (profession or trade,) domiciled in this city, street of ———, number ———, son of Mr. ——— ———, and Mrs. ——— ———

And Miss (or Mrs.) ——— ———, a native of ———, municipal district of ———, province of ———, ——— years of age, single, (profession or trade,) domiciled in ——— street, of ———, number ———, daughter of Mr. ——— ——— and Mrs. ——— ———, have agreed to celebrate a canonical marriage before the parochial priest of the church of ———, of this district, at 8 o'clock in the morning, the ——— instant, at the chapel altar, of ———, of the same church (or at the domicile of ——— street, number ———), and in compliance with the provisions of article 77 of the civil code, inform your honor thereof, for the purposes mentioned therein.

Madrid, ———, the ———, 189———.

FORM B.

Receipt of the notification or written statement.

I, the undersigned, municipal judge of ——— ———, hereby certify that to-day, at ——— o'clock in the morning, Mr. ——— presented a written statement in which he notifies this court that on ———, at ——— o'clock, the celebration of his marriage with Miss (or Mrs.) ——— ———, at the parochial church of ———, will take place.

In witness whereof I issue these presents, which I sign on the ——— ———.

FORM C.

Memorandum of entry of a canonical marriage which the municipal judge attends.

[Article 9.]

In the city of ———, on ———, 189———, I, the undersigned ——— ———, municipal judge for the district of ———, being in the church of San Juan of this city, where I came in order to attend the celebration of the canonical marriage agreed upon between Mr. ——— ———, and Miss (or Mrs.) ——— ———, in virtue of the previous notification received by me in due form from the same, declare: That in my presence ———,

parochial priest of the said church, proceeded to unite in canonical marriage the above-mentioned Mr. ——— ———, ——— years of age, single, a native of ———, resident of ———, legitimate son of —— Mr. ——— and Mrs. ——— ———; and Miss (or Mrs.) ———, ——— years of age, a native of ———, and resident of———, legitimate daughter of Mr. ——— ——— and Mrs. ——— ———, there having also attended this ceremony the father and mother of the groom and bride, and the witnesses, Mr. ——— ———, ——— of age, citizen of ———, and Mr. ——— ———.

In witness whereof I draft this memorandum of record of the above-mentioned marriage for the purposes of article 77 of the civil code, which is signed with me by the contracting parties and by the witnesses after being informed of its contents.

Remarks for drafting the memorandum.

1. In case either of the contracting parties should not be a legitimate child it shall be stated in the special place indicated in the memorandum that he or she is illegitimate, stating whether natural or a foundling, without stating in other cases any other kind of illegitimacy.
2. When either of the contracting parties is represented by a proxy, mention shall be made of the power of attorney in which the representation has been granted as well as the name and surname, age, nativity, domicile, profession, or trade of the proxy.
3. Should the contracting parties state that they have natural children which are to be legitimized by the marriage, this statement and the names of the children shall be entered.
4. When one of the contracting parties is widowed, the name and surname of the deceased spouse shall be entered in the memorandum, as well as the date and place of death, and the civil or parochial registry in which it may have been recorded.
5. In the memorandum there shall be stated the date of the permission or request for advice required by the civil code, when proper.
6. Should those who are to give their consent or advice for the marriage attend the same, and should state their consent in the memorandum, they shall sign the same in person or request another to do so in their stead, should they not be able or not know how to sign.
7. Should special cases occur, unforeseen in these remarks, the municipal judges shall observe, in order to decide and record them in the memorandum, when proper, the legal provisions referring thereto.

FORM D.

Memorandum of record of a canonical marriage which the delegate of the municipal judge attends.

(Article 11.)

In the village of ———, municipal district of ——— ———, on ———, 189——, I, the undersigned, petty mayor of the said ward, being in the parochial church of San Pedro, where I came as a delegate designated by the municipal judge of the said subdistrict, in order to attend, in compliance with the provisions of article 77 of the civil code, the celebration of the marriage agreed upon between Mr. ——— ——— and Miss (or Mrs.) ——— ———; and in virtue of the order of the said judge I declare that in my presence ——— ———, parochial priest of the

above-mentioned church, proceeded to unite in canonical marriage the said Mr. ——, ——, ——, ——, years of age, single, a native of ——, resident of ——, legitimate son of Mr. —— —— and Mrs. ——, ——, and Miss (or Mrs.) ——, ——, ——, ——, years of age, a native of —— and resident of ——, legitimate daughter of Mr. —— and Mrs. ——, ——, the father and mother of the groom and bride also attending said ceremony, as well as the witnesses, Mr. ——, ——, ——, of age, a resident of ——, and Mr. ——, ——.

In witness whereof I draft this memorandum of record of the said marriage, which shall be immediately entered in the section of marriages of the civil registry of the municipal court for the purposes of article 77 of the civil code, being signed by myself, the contracting parties, the parents, and the witnesses present at this ceremony after its contents have been made known to them, to which I certify.

FORM E.

Copy of the memorandum drafted on common paper regarding a canonical marriage which the municipal judge or his delegate attended.

(Article 13.)

In the city, village, or locality of ——, on this date, is being entered the canonical marriage to which the memorandum refers and which is literally as follows:

[Copy in full.]

The copied memorandum is deposited in this civil registry in package No. —— of the section of marriages.

[Date and signature.]

FORM F.

Transcription of the certificate of a canonical marriage which neither the judge nor his delegate attended.

(Article 15.)

In the city of ——, before ——, municipal judge, and ——, secretary, appeared Mr. —— ——, and stated that in the name of —— he presented the certificate of the canonical marriage that was celebrated on —— of the month of ——, 18——, between Mr. —— —— and Miss (or Mrs.) —— ——, before the parochial priest of the church of ——, which neither the municipal judge nor his delegate attended, in order that the said certificate be entered in this registry in compliance with the provisions of article 77 of the civil code. In view thereof, and it appearing that the contracting parties gave (or did not give) timely notice of the celebration of the canonical marriage, the judge ordered that the record of the canonical certificate of the above-mentioned marriage be made. In consequence thereof the above certificate is copied literally, as follows:

[Here the certificate.]

The foregoing certificate is deposited in this registry in package No. —— of the section of marriages.

APPENDIX III.

Before whom and how opposition to marriage shall be made.

(See articles 97 et seq. of the code.)

From the context of the provisions of the code in article 97 et seq., and in connection with the existing additional laws, may be deduced the rules relating to the proceedings and competency of the matter referred to in the title of this appendix and which may be summed up as follows:

1. The judge competent to take cognizance of the opposition to the marriage is the judge of first instance under whose jurisdiction is the municipal district within which it is to be celebrated.

2. In the objection made to the municipal judge, in addition to the ordinary requisites, there shall be clearly stated the reasons for the opposition and the qualification giving the objecting party the right to make it.

3. The judge receiving it shall deliver the ratification to the objecting party and communicate the same to the department of public prosecution within the term of three days.

4. Should the latter find a legal foundation it shall request that, with the suspension of the celebration of the proposed marriage, the objection be transmitted to the judge of first instance, in order that he may draft the opposition in the form provided by article 524 of the law of civil procedure.

5. The party interested in the noncelebration of the marriage, instead of the objection, may make the opposition in person within the fifteen following days to the judge of first instance, who, if the objection has the legal requisites, shall have immediately a written order issued to the municipal judge in order that he suspend the celebration of the marriage until the certification of the judgment or final decision terminating the proceedings be delivered to him.

6. The municipal judge shall give notice of the mandate suspending the celebration of the marriage to those intending to contract it and to their parents or guardians, if they be under 23 years of age.

7. At the time of the notice or within the following twenty-four hours the interested parties or any of them may state that they desist from celebrating the marriage, in which case the proceedings shall be transmitted to the judge of first instance, who shall decree their termination and officially award the costs.

8. The department of public prosecution shall be heard in these proceedings when it has not itself instituted the opposition by virtue of the provisions of article 98 of the civil code.

9. From the decision of the judge of first instance appeal can only be made to the territorial audiencia.

10. Should the objection be dismissed and the interested parties demand indemnity for losses and damages, the proceedings shall follow the provisions of articles 928 et seq. of the law of civil procedure.

11. Should the judge or court consider the objection malicious, he shall reserve to those injured the right to bring the proper civil or criminal action, transmitting the decrees to the department of public prosecution in order that the criminal action may be instituted, if proper.

12. All the time fixed for the prosecution of these proceedings can not be extended and can not be suspended for any reason whatsoever. Moreover, there shall be applied thereto the rules governing urgent business.

APPENDIX IV.

Preliminary proceedings in trials for divorce or annulment of civil marriages.

(See article 107 of the code.)

There being no special precept in our law of procedure in force that may be applied to the subject in question, it seems opportune to give a few suggestions in order that the reader may know the thought and point of view of the illustrious jurists and the most honorable officials of the judicial department, and which may serve as a guide in the cases in which nothing has been provided for in the substantive law.

These suggestions are the following:

1. The spouse who intends to institute the proper action shall present to the competent court of first instance a document containing a summary statement of the facts and claims he proposes to sustain, accompanied by documents in support thereof; should he have none, a preliminary investigation shall take place with the participation of the department of public prosecution, in order to corroborate the same.

2. The judge shall render a decision granting the ratification, which shall be done immediately; and should the plaintiff not be able to appear in person, the judge shall go to his domicile or address the proper letters rogatory when the latter resides in another judicial district.

3. Before delivering the writ of ratification, the judge shall make the proper observations to the plaintiff, informing him of the importance of the suit he is beginning and of the consequences it may produce in the family.

If, notwithstanding this, the plaintiff should persist, a decision shall issue citing the two spouses to appear on the day and hour appointed.

4. Should the plaintiff, without alleging a legal excuse, not appear before the court, he shall be considered as having abandoned the suit, and the costs shall be charged to him; should the defendant not appear, he shall incur a fine of 10 to 100 pesetas and the payment of the costs caused thereby, and a second citation shall be sent him, with the warning that proper procedure will be taken against him, should he persist in his contempt.

5. The appearance shall take place without the presence of next friends or defenders, and should reconciliation be impossible the judge shall issue an order authorizing the party instituting the proceedings to make his complaint in accordance with law within the term of thirty days, otherwise being barred.

6. In the same decree he shall order the steps taken indicated in article 68 of the civil code, and if the reasons for divorce are based on one or more of causes 1, 2, 3, and 6 of article 105 of the civil code the parents shall provide by mutual agreement for the care and education of the children.

7. At the instance of any of the parties, and at their expense, reconciliation may be attempted during the course of this kind of actions.

8. Notwithstanding the provisions of the preceding rules, when in compliance with the provisions of article 102 of the civil code, the action for annulment of marriage may be instituted not only by the spouses, but by the department of public prosecution or by any of the persons interested therein, the complaint shall be presented immediately,

together with the necessary documents, and an attempt at reconciliation shall not take place; but in the order admitting it there shall be adopted the measures indicated in said article 68.

9. It is likewise not necessary to attempt reconciliation when the residence of the defendant is unknown, or when the latter is in a foreign country, or there be any other obstacle difficult to overcome and for which the plaintiff is not responsible.

10. The department of public prosecution shall always be a party to suits of this kind, and if it should not have begun the suit it shall be heard last. At its instance, should it appear that the plaintiff is also culpable or is guilty of any of the causes which give rise to a divorce, in case a countercharge is made by the defendant, it may be declared, without further proceedings, that neither has the right to continue the suit.

11. Nevertheless, in one of the cases mentioned in the second paragraph of article 74 of the civil code the suit instituted by the department of public prosecution shall be continued.

12. The spouses, whether minors or of age, shall appear in person and without the attendance of their parents or legal representatives unless they are otherwise incapacitated.

APPENDIX V.

Rules containing the modifications which may be considered indispensable in proceedings relating to guardianship in accordance with the provisions of the code. (*Articles 203, 206, 214 et seq., 222, and 228.*)

The following are the general indications that may be made:

1. The municipal judge of the place, in the case foreseen in article 203 of the civil code, shall officially make an order which shall head the papers in the proceedings, naming, on his responsibility, a defender having all the conditions required for the duties of a judicial manager, taking care of the person and property of the minor, informing the department of public prosecution and the person designated of the decree.

2. Should the said department make opposition to the memorandum of notification, what may be proper shall be clearly decided.

3. The charge once accepted by the person designated, he shall immediately enter upon his duties, and shall bear all the obligations of the guardian.

4. As soon as the guardian is appointed the defender shall cease to be such and shall render account to the former.

5. These provisions are applicable in all cases where the minor or incapacitated person has no legal representative according to law.

The following rules may be applied to testamentary guardians:

That the appointments made by the mother or a stranger, in the conditions determined in paragraph second of articles 206 and 207 of the civil code, shall not be ratified without a certification of the agreement of the family council, expressing the necessary approval and acceptance.

In regard to legal guardians the following rules may be established:

1. Should no guardian have been named by the father, mother, or any other person, designating a minor as an heir, or has left him an important legacy, the judge shall designate for this charge the relative upon whom this is incumbent, according to the provisions of article 211 of the civil code.

2. When the relative upon whom the guardianship is incumbent is not well known, the judge shall make investigations concerning him through the civil and ecclesiastical authorities, and the appointment shall be made according to the same.

3. Should any one of these have any known incapacity, this shall be stated, and the appointment of his successor shall then be made.

4. Should there be objection to the appointment, it shall be discussed and decided by judicial procedure between him who institutes the same and the appointed guardian, the interests of the minor being represented by the department of public prosecution.

5. During the prosecution of the suit the guardian elect, who shall act as the defendant, shall have the custody of the minor and the management of his property, giving a guaranty that may appear sufficient to the judge.

6. Should the guardian elect refuse to accept the charge, the department of public prosecution shall be heard, and should the latter consent the judge shall appoint another guardian.

7. Should the department of public prosecution not consent, the opposition shall be discussed and decided in interlocutory procedure, observing the provisions of rule 5.

8. After the acceptance of the person designated, and his giving security in a proper case, he shall be appointed to the office.

The following rules may be established for the appointment of guardians of incapacitated persons:

1. When a judicial authority or a police agent has knowledge of the existence of an insane or deaf and dumb orphan, having no person appointed by law to take care of and defend him, he shall notify the competent judge and the latter shall officially proceed to institute proceedings of provisional incapacity.

2. In this procedure there shall be observed the provisions of articles 214 and 220, both inclusive, of the civil code.

3. The rules established in the law of civil procedure for the adoption of urgent measures, in so far as not modified by the civil code, shall be observed in the proof.

The two following rules shall be observed for the appointment of a guardian for prodigals:

1. The declaration of prodigality shall be instituted by means of a complaint with the requisites mentioned in article 524 of the law of civil procedure, presented by one of the persons authorized therefor, according to article 222 of the civil code.

2. The declaration requested having been obtained by final judgment after proceedings as in declaratory suits involving a large amount, in which the necessary urgent measures may be adopted, subject to summary proceedings, the literal certificate of the same shall be taken to head the papers in the case, and a guardian for the property shall be immediately appointed.

Lastly, in regard to the appointment of guardians for those under civil interdiction the following shall be observed:

1. That in the case provided for in article 228 of the civil code the department of public prosecution shall request that the certificate of the paper heading the proceedings, and that part of the final judgment decreeing the penalty of interdiction that may have been imposed, shall serve as the heading to the papers of the proceedings demanding the appointment of the guardian.

2. That should the appointment of a guardian be requested by any of the persons having such a right, at the end of the document a mandate shall be made annexing the aforesaid certificate, which mandate shall be requested of the judge, or court before whom the execution of the judgment rendered in the criminal cause may be pending.

3. That although the case has not been instituted by the department of public prosecution, the latter should be a party to the same.

4. That the proceedings shall in other matters be governed by the modifications established by the civil code.

APPENDIX VI.

Alienation, encumbrance, etc., of property of minors. (Articles 269 and 903.)

Although in the note to article 903 of the code some indications and references are made as to the proceedings for the alienation, encumbrance, and compromises involving property of minors, etc., they must be completed by others, which we consider useful, for the resolution of the difficulties that may arise necessarily on this point, in the application of the new provisions of our civil law, to cases occurring in practice. These indications are the following:

1. In cases mentioned in No. 5 of article 269 of the civil code, the guardian shall solicit of the president of the family council, or in his absence of the municipal judge, to convoke said council in order that it may give the necessary authorization.

2. The council, in view of the documents presented by the soliciting party or of the report given, shall concede or refuse the authorization without further appeal, and may establish the rules to which the alienation or encumbrance shall be subject.

3. In all cases the guardian shall be assisted by the secretary, acting as such in the family council, and the price for the sale shall be that of the appraisement made when the inventory was drawn up.

4. When the sale, by resolution of the family council or in compliance with the law, has to take place by public auction the secretary shall issue a notice in which shall be given the place, day, and hour of the sale, the name of the officer before whom it shall be held, as well as the names of the guardian and the minor, the description of the property about to be sold, with the data required in summary proceedings, if it consists of real property, and should it be personal the indication of its kind and quality shall be sufficient. Copies of the notice shall be affixed in proper places, in order that the sale may have greater publicity, advertising it in the local paper that has the largest circulation, and, should it be necessary, in the "Boletin Oficial" of the province.

5. In the public sale the guardian and officer shall observe the provisions of section second, title XV of book second of the law of civil procedure.

6. A bid that does not cover the amount of value fixed for the property shall not be admitted.

7. No admissible bid having been made, the guardian may make before the family council one of the following propositions:

a. That he may be considered as relieved from duty and be substituted in the case.

b. That a second public sale be announced with a reduction of 20 per cent of the price.

8. The second public sale shall take place with the same formalities as the first.

9. When the sale is made for the payment of debts or any other necessity, at the request of the guardian, a third auction may take place with a reduction of another 20 per cent from the price set for the second.

10. Should, even then, no admissible bid be made, the representative of the minor may be authorized to privately sell for the price fixed for the third auction.

11. The sale once made, the family council shall see that the price obtained is applied as indicated in the request for authorization.

12. The price shall be delivered, while the proper application is made to the guardian, if he is exempted from giving security, or if the one given by him is sufficient to insure the same. Otherwise, it will be deposited in a public institution in which the judicial deposits may be made.

13. The authorization for compromises of the rights of the minors and incapacitated persons shall be solicited by the same persons as may request the sale of property. In the document in which the authorization is solicited must be expressed the reason and object of the compromise, the doubts and difficulties of the business, and the reasons for considering the same as useful and convenient, and the document shall be accompanied by the one in which the basis of the compromise is stated. With the document shall also be delivered those necessary to form an exact judgment on the subject, together with the necessary data.

14. The family council, in view of the opinion of the guardian and hearing one or more lawyers strangers to the suit or business in question, should it be deemed necessary, shall concede or refuse the authorization requested.

15. When it is conceded it shall be expressed in the memorandum, and with the certification thereof the guardian shall apply to the judge or court, should the suit be pending, in order that it may be given effect.

16. The same formalities as those established for the sale, without necessity of public bids, shall be observed for the mortgaging or encumbering of real property, or for the extinction of real rights pertaining to minors or incapacitated persons.

APPENDIX VII.

Method of procedure of the family council (article 304, et seq.).

From the character of the institution, as well as from the provisions of the civil code, the following method of procedure may be established for family councils:

1. The council shall meet by virtue of a summons issued in a decision, which heads the papers of the proceeding and which shall be issued ex officio by the municipal judge or at the request of the department of public prosecution, in cases in which the latter must participate according to the code or the law on civil procedure, and in which shall be designated the persons that are to take part.

2. The summons shall be made by the secretary or a subaltern officer of the court in the form provided for oral trials; but should any of the members reside outside the seat of the municipal district, or in another municipal district, he shall be notified directly by means of a registered letter, or through the respective petty mayor.

3. The questions arising from the constitution of the family council, the excuses or better right to form part of the same, shall follow the proceedings for urgent measures, and shall be decided by the municipal judge according to the documents accompanying the claim.

4. The decision of the municipal judge may be appealed from for review only, to the judge of first instance, who shall decide the same, without any further appeal, by the same proceedings as those established for oral trials.

5. Should the family council not find any urgent measures to deliberate upon, its meeting shall be postponed until the appeal has been decided.

6. The family council having been constituted for the first time, for the next sessions it shall be convoked by the president, who may make use therefor of the subaltern officers of the municipal court or of the petty mayors; the municipal judge shall cure the defects of the summons, and shall do it whenever for some cause or other the personnel of the family council is renewed.

7. Each deliberation and decision of the family council shall be contained in a memorandum drawn up by the secretary of the municipal court, the secretary of the municipal council, their substitutes, or a notary to be selected by the family council, and shall state:

(*a*) The date and place of the meeting and the authority that has ordered the same.

(*b*) The names and surnames of those summoned, stating those who were present.

(*c*) The subject of the meeting and the summary statement of the deliberations.

(*d*) The other statements required by law, and especially the vote given by each member when the decision has not been adopted unanimously.

In order that a decision be adopted, there must be at least two favorable votes.

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8. The memorandum shall be signed by all those present, and shall be filed, at the disposition of the family council, in the municipal court or some other public depositary, until it is delivered to the minor after his having reached majority; those referring to the same, shall be affixed one to the other, and shall have the same validity as the other judicial documents.

9. Should the guardian, or in his absence, the protutor, not be present at the deliberations of the family council, he shall be notified of the decision, together with a copy of the proceedings, to enable him to fully execute the same.

10. When the decision of the family council is not final without the approbation of the judicial authority, the guardian or protutor shall fully present it to the same within the fifteen days of its adoption, should there be no other term established in the same.

11. Should the guardian not fulfill this obligation any of those forming part of the council or the department of public prosecution shall take his place; the expenses, however, shall be imposed personally upon the negligent party.

12. The appeal presented before the judge of first instance, referred to in article 310 of the civil code, and the approval of the decision necessary in a proper case, shall follow the same procedure of oral trials; the same to be confirmed before the municipal judge within the fifteen following days.

13. When the decision that has been appealed from is not final without judicial approval, the same shall be given or refused in the same decision which is rendered on the appeal.

14. When, in the judicial guardianship proceedings, the absence of a relative in the required degree for conferring upon him the legitimate guardianship has been proved, the family council shall meet and appoint for this duty a person worthy of its confidence.

15. The appointment shall be communicated by means of a certificate signed by the secretary and countersigned by the president, to the court of the first instance, which, after the acceptance of the person designated and his giving security, shall appoint him as guardian.

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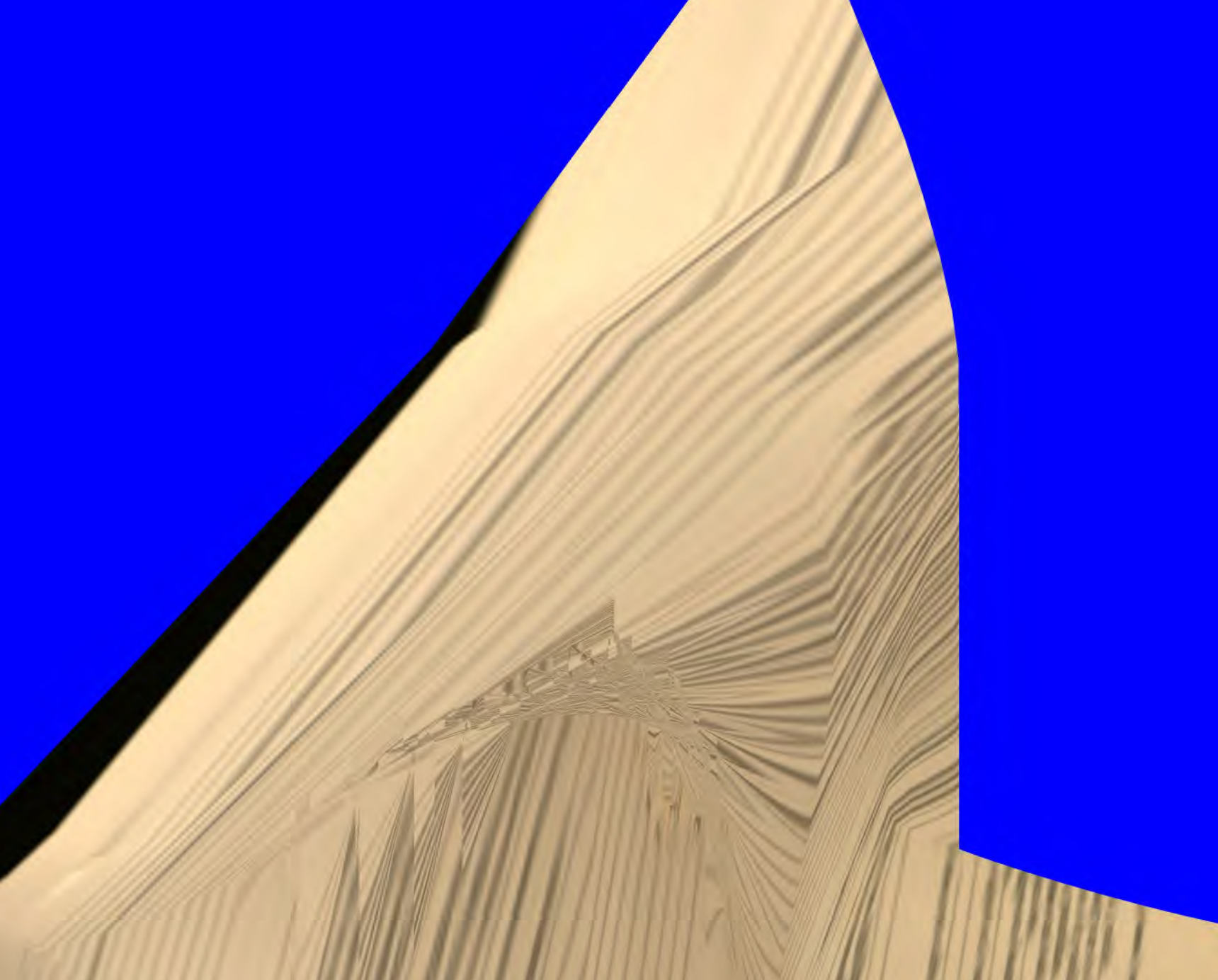

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